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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 25 मई, 2023

का.आ. 855.—राष्ट्रीय अवसंरचना वित्तपोषण और विकास बैंक अधिनियम, 2021 (2021 का 17) की धारा 6 की उप-धारा (1) के खंड (घ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतदद्वारा, श्री पंकज जैन के स्थान पर श्री भूषण कुमार सिन्हा, संयुक्त सचिव, वित्तीय सेवाएं विभाग, वित्त मंत्रालय को तत्काल प्रभाव से और अगले आदेशों तक, राष्ट्रीय अवसंरचना वित्तपोषण और विकास बैंक के निदेशक मंडल में निदेशक नामित करती है।

[फा. सं. 15/10/2021-आईएफ-I]

कार्तिकेय मिश्र, निदेशक

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 25th May, 2023

S.O. 855.—In exercise of the powers conferred by Clause (d) of sub-section (1) of Section 6 of the National Bank for Financing Infrastructure and Development Act, 2021 (17 of 2021), the Central Government hereby nominates Shri Bhushan Kumar Sinha, Joint Secretary, Department of Financial Services, Ministry of Finance as Director on the Board of Directors of National Bank for Financing Infrastructure and Development, vice Shri Pankaj Jain, with immediate effect and until further orders.

[F. No. 15/10/2021-IF-I]

KARTIKEYA MISRA, Director

नई दिल्ली, 25 मई, 2023

का.आ. 856.—भारतीय निर्यात-आयात बैंक अधिनियम, 1981 (1981 का 28) की धारा 6 की उप-धारा (1) के खंड (ड.) के उप-खंड (i) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्रीमती रूपा दत्ता के स्थान पर श्रीमती हिमानी पांडे, संयुक्त सचिव, उद्योग संवर्धन और आंतरिक व्यापार विभाग को तत्काल प्रभाव से और अगले आदेशों तक, भारतीय निर्यात-आयात बैंक (एक्जिम बैंक) के निदेशक मंडल में निदेशक नामित करती है।

[फा. सं. 9/1/2022-आईएफ-I]

कार्तिकेय मिश्र, निदेशक

New Delhi, the 25th May, 2023

S.O. 856.—In exercise of the powers conferred by Sub-Clause (i) of Clause (e) of sub-section (1) of Section 6 of the Export Import Bank of India Act, 1981 (28 of 1981), the Central Government hereby nominates Ms. Himani Pande, Joint Secretary, Department for Promotion of Industry and Internal Trade, as Director on the Board of Directors of Export Import Bank of India (Exim Bank) *vice* Ms. Rupa Dutta, with immediate effect and until further orders.

[F. No. 9/1/2022-IF-I]

KARTIKEYA MISRA, Director

वाणिज्य एवं उद्योग मंत्रालय

(वाणिज्य विभाग)

नई दिल्ली, 24 मई 2023

का.आ. 857.—केन्द्रीय सरकार, निर्यात (गुणवत्ता नियंत्रण एंव निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) के साथ पठित निर्यात (गुणवत्ता नियंत्रण एंव निरीक्षण) नियम, 1964 के नियम 12, के उपनियम (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैसर्स मित्रा एस.के. प्राइवेट लिमिटेड, हाउस नम्बर-1917, सुकलभटवादी, एट एंड पोस्ट रेडी,तालुका- वेंगुर्ला, जिला-सिंधुदुर्ग, महाराष्ट्र- 416517, (जिसे एतद्पश्चात उक्त अभिकरण कहा जायेगा), को इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से तीन वर्ष के लिए, वाणिज्य मंत्रालय की शासकीय राजपत्र में प्रकाशित भारत सरकार की अधिसूचना के साथ अनुसूची में निर्दिष्ट दिनांक 20 दिसम्बर, 1965 की अधिसूचना की सं.का.आ. 3975 के तहत प्रकाशित अधिसूचना में उपाबद्ध अनुसूची में विनिर्दिष्ट खनिज और अयस्क समूह-I, अर्थात लौह अयस्क के निर्यात से पूर्व निम्नलिखित शर्तों के अधीन रेडी पत्तन और किरणपानी पत्तन में उक्त खनिज और अयस्क के निरीक्षण करने के लिए एक अभिकरण के रुप में मान्यता देती है, अर्थात् :

(i) यह अभिकरण, खनिज और अयस्क समूह-I का निर्यात (निरीक्षण) नियम, 1965 के नियम 4 के अधीन निरीक्षण की पद्धति की जाँच करने के लिये निर्यात निरीक्षण परिषद् द्वारा निमित्त अधिकारियों को पर्याप्त सहयोग और सहायता प्रदान करेगी;

(ii) यह अभिकरण, इस अधिसूचना में यथा विनिर्दिष्ट अपने कार्यो का निष्पादन करने के लिए, निदेशक (निरीक्षण और गुणवत्ता नियंत्रण) निर्यात निरीक्षण परिषद द्वारा समय-समय पर, लिखित रूप में, दिए गए निर्देशों से आबद्ध होंगी ।

[फा. सं. के-16014/2/2023 - निर्यात निरीक्षण]

एम. बालाजी, संयुक्त सचिव

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

New Delhi, the, 24th May, 2023

S.O. 857.—In exercise of the powers conferred by sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963) read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government now recognizes, M/s Mitra S.K. Private Limited, House No.-1917, Sukalbhatwadi, At & Post- Redi, Taluka- Vengurla, District-Sindhudurg, Maharashtra - 416517, (hereinafter referred to as the said agency), as an agency for three years with effect from the date of publication of this notification in the Official Gazette, for the inspection of Minerals & Ores, Group - I, namely Iron Ore as specified in the Schedule annexed to the notification of the Government of India in the Ministry of Commerce, published in the Official Gazette *vide* number S.O.3975 dated 20th December, 1965 respectively, before export of the said Minerals and Ores at Redi port and Kiranpani port, subject to the following conditions, namely: -

(i) the said agency shall extend adequate cooperation and assistance to the officers nominated by the Export Inspection Council on this behalf to carry out the inspection specified under rule 4 of the Export of Minerals and Ores – Group I (Inspection) Rules, 1965;

(ii) the said agency, in performance of their function as specified in this notification, shall be bound by such directions, as the Director (Inspection and Quality Control), Export Inspection Council may give, in writing from time to time.

[F. No. K-16014/2/2023 - Export Inspection]

M. BALAJI, Jt. Secy.

नई दिल्ली, 24 मई, 2023

का.आ. 858.—केन्द्रीय सरकार, निर्यात (गुणवत्ता नियंत्रण एंव निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) के साथ पठित निर्यात (गुणवत्ता नियंत्रण एंव निरीक्षण) नियम, 1964 के नियम 12, के उपनियम (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स इंस्पेक्टोरेट ग्रिफिथ इंडिया प्रा.लि., साईं समुथिरा, प्लाट नंबर 41 बी और 41 सी, ग्राउंड फ्लोर उत्तरी चरण, सिडको इंडस्ट्रियल एस्टेट, एक्कटूथंगल, गिंडी, चेन्नई - 600032 (जिसे एतद्पश्चात उक्त अभिकरण कहा जायेगा), को इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से तीन वर्ष के लिए, वाणिज्य मंत्रालय की शासकीय राजपत्र में प्रकाशित भारत सरकार की अधिसूचना के साथ अनुसूची में निर्दिष्ट दिनांक 20 दिसम्बर, 1965 की अधिसूचना की सं॰ का.आ. 3975 और दिनांक 20 दिसम्बर, 1965 की अधिसूचना की सं॰ का.आ 3978 के तहत प्रकाशित अधिसूचना में उपाबद्ध अनुसूची में विनिर्दिष्ट खनिज और अयस्क समूह-I, अर्थात लौह अयस्क, मैंगनीज अयस्क और समूह-II, अर्थात मैंगनीज डाइऑक्साइड, बैराइट्स के निर्यात से पूर्व निम्नलिखित शर्तों के अधीन चेन्नई पत्तन, कामराजार एन्नोर पत्तन तथा अडानी कट्टुपल्ली पत्तन में उक्त खनिज और अयस्क के निरीक्षण करने के लिए एक अभिकरण के रुप में मान्यता देती है, अर्थात् :

(i) यह अभिकरण, खनिज और अयस्क समूह-I का निर्यात (निरीक्षण) नियम, 1965 तथा खनिज और अयस्क समूह-।। का निर्यात (निरीक्षण) नियम, 1965 के नियम 4 के अधीन निरीक्षण की पद्धति की जाँच करने के लिये निर्यात निरीक्षण परिषद् द्वारा निमित्त अधिकारियों को पर्याप्त सहयोग और सहायता प्रदान करेगी;

(ii) यह अभिकरण, इस अधिसूचना में यथा विनिर्दिष्ट अपने कार्यो का निष्पादन करने के लिए, निदेशक (निरीक्षण और गुणवत्ता नियंत्रण) निर्यात निरीक्षण परिषद द्वारा समय-समय पर, लिखित रूप में, दिए गए निर्देशों से आबद्ध होंगी ।

[फा. सं. के-16014/4/2023 - निर्यात निरीक्षण]

एम० बालाजी, संयुक्त सचिव

New Delhi, the 24th May, 2023

S.O. 858.—In exercise of the powers conferred by sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963) read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government now recognises M/s. Inspectorate Griffith India Pvt. Ltd., Sai Samuthira, Plot No. 41B & 41C, Ground Floor, North Phase, SIDCO Industrial Estate, Ekkattuthangal, Guindy, Chennai – 600 032 (hereinafter referred to as the said agency), as an agency for three years with effect from the date of publication of this notification in the Official Gazette, for the inspection of Minerals & Ores, Group-I, namely – Iron Ore, Manganese Ore and Group -II, namely- Manganese Dioxide, Barytes, as specified in the Schedule annexed to the notification of the Government of India in the Ministry of Commerce, published in the Official Gazette *vide* number S.O.3975 dated 20th December, 1965 and S.O.3978 dated 20th December, 1965 respectively, before export of the said Minerals and Ores at Chennai port, Kamarajar Ennore port and Adani Kattupalli port, subject to the following conditions, namely: -

(i) the said agency shall extend adequate cooperation and assistance to the officers nominated by the Export Inspection Council in this behalf to carry out the inspection specified under rule 4 of the Export of Minerals and Ores – Group I (Inspection) Rules, 1965 and Export of Minerals and Ores – Group II (Inspection) Rules, 1965;

(ii) the said agency, in performance of their function as specified in this notification shall be bound by such directions, as the Director (Inspection and Quality Control), Export Inspection Council may give, in writing from time to time.

[F. No. K-16014/4/2023 - Export Inspection]

M. BALAJI, Jt. Secy.

श्रम और रोजगार मंत्रालय

नई दिल्ली, 22 मई, 2023

का.आ. 859.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, हिंदुस्तान एयरोनॉटिक्स लिमिटेड, लखनऊ; मैसर्स शाह बंधु, द्वारा श्री योगेंद्र प्रसाद शाह, स्वच्छता ठेकेदार, हरजेंद्र नगर, कानपुर; मैसर्स ग्रुप-4 फैसिलिटी सर्विस, द्वारा श्री नवल कपूर, निदेशक कार्मिक, 1/97, विद्युत खंड, गोमती नगर, लखनऊ, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री सूर्य लाल, कामगार,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 68/2011) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 4/05/2023 को प्राप्त हुआ था।

[सं. एल -42025-07-2023-78 -आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 22nd May, 2023

S.O. 859.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 68/2011) of the Central Government Industrial Tribunal cum Labour Court–Lucknow, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Hindustan Aeronautics Limited, Lucknow; M/s Shah Bandhu, through Shri Yogendra Prasad Shah,Sanitation Contractor, Harjendra Nagar, Kanpur ; M/s Group -4 Facilities Service, through Sri Nawal Kapoor, Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow, and Shri Surya Lal, Worker, which was received along with soft copy of the award by the Central Government on 04/05/2023.

[No. L- 42025-07-2023-78- IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT LUCKNOW

Present: JUSTICE ANIL KUMAR**,** Presiding Officer

I.D. No. 68/2011

BETWEEN

Surya Lal, son of Sri Nanhu,
Resident of 631/54, Ismailganj, Post Chinhat,
Faizabad Road, District Lucknow.

AND

1. Hindustan Aeronautics Limited, Lucknow Division,
   Lucknow through its General Manager.
2. General Manager, Hindustan Aeronautics Limited,
   Lucknow Division, Lucknow.
3. M/s Shah Bandhu, through Sri Yogendra Prasad Shah,
   Sanitation Contractor, 504, Viman Nagar, G.T. Road.
   Harjendra Nagar, Kanpur.
3. M/s Group -4 Facilities Service, through Sri Nawal Kapoor,
   Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow.

AWARD

On 28.02.2010 the claimant/workman has field the ID case No. 68/2011 as per the provisions of Section 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

Facts of the case:

Hindustan Aeronautics Limited, Lucknow Division (hereinafter referred to as Establishment), is a factory registered under the provisions of the Factories Act, which is situated at Faizabad Road, Lucknow and the sanitation work of the premises of the Establishment as well as Plant and Machinery installed at the factory premises is a perennial as well regular nature of job.

Establishment is an Engineering Industry and the Government has issued a notification dated 24.04.1990 under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 after the recommendation of Contract Labour Advisory Board, whereby 18 works of the Engineering Industry, which are regular or perennial in nature has been prohibited.

However, it was the prevalent practice in establishment that they employed the contract labour for sanitation work of the establishment/premises despite the fact that the sanitation work was regular in nature; and the claimant/workman was working in the establishment right from the very beginning i.e. from the date, the factory was established and continuously worked till the date of termination i.e. 21.12.2001.

As per the case workman order of termination dated 21.12.2001 by which his services in an illegal and unjustified manner was terminated, inasmuch as in establishment of the employers there were more than 100 workmen employed as such the compliance of Section 25-N of the Industrial Disputes Act was necessary but before terminating the services of the workmen, the employers have not complied with the provisions of Section 25-N of the Industrial Disputes Act.

Further, the services of the workman have been terminated by the principal employer not by the contractor and the work which were being performed by the concerned workman still exist with employers and the same is being carried out by employing new workmen on contract basis.

In the claim petition it has been pleaded that earlier the workmen's Union in Establishment i.e. Hindustan Aeronautics Karamchari Sabha, raised the dispute of the workman along with some other workmen before the State Government which, was referred for adjudication before the Industrial Tribunal (II), U.P., Lucknow, registered before Industrial Tribunal (II), U.P., Lucknow as Adj. Case No.: 126 of 2002.

However, on account of the fact that the workman along with some other workmen were not satisfied with the pairavi of the Union as such an authority letter was filed along with an application by 20 workmen amongst the concerned workman to represent the said case but the Union, filed objection that as applicants who have filed the application are not party in the said case as such they are not entitled to represent the case. By an order dated 10.03.2010, the Hon'ble Presiding Officer held that the workmen are not satisfied with the proceedings through Union, they can raise separate dispute "under the provisions of Act.

Thereafter, an application was filed by 36 workmen including the claimant/workman on 10.07.2010 before, the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow for deletion of the names of the workmen from the reference order so that they may be in position to raise fresh industrial dispute before the competent Forum and the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow after hearing the parties concerned was pleased to allow the said application except three whose names were not mentioned in reference order.

In pursuance to order dated 20.07.2010 the workman concerned along with 32 other workman filed an application before the Regional Labour Commissioner (Central), Lucknow which was registered as Case No. LKO-8(2-32)/2010: Laxmi Narain and 32 others Vs. General Manager, Hindustan Aeronautics Limited and others.

Thereafter, Regional Labour Commissioner (Central), Lucknow, called upon the parties for conciliation proceedings and in pursuance thereof Hindustan Aeronautics Limited appeared before him and filed their objections and due to the negative attitude of the employers, no settlement could be arrived between the parties.

Since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.

In view of above said factual background the present case has been filed u/s 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) with following prayer:

> *"WHEREFORE, it is most respectfully prayed that the Hon'ble Court may be pleased to declare that the action of the management in terminating the services of workman with effect from 21.12.2001 is neither legal nor justified and accordingly the workman concerned is entitled to get reinstatement in service together with entire consequential benefits including back wages and other service benefits, in the interest of justice."*

On behalf the respondent written statement has been filed on 02.05.2012 in which following preliminary objection was taken:

> *"1. That the aforesaid ID Case No.74/2011 is not maintainable as per the provisions of ID Act 1947 (as mended by ID (Amendment) Act 2010) because the same is barred by limitation U/S 2A(3) of the ID Act (Amendment 2010) which is quoted as below:*
>
> > *2A(3) "the application referred to in sub section 2 shall be made to Labour Court or Tribunal before the expiry of 3 years from the date of discharge, dismissal, retrenchment or otherwise termination service as specified in sub section 1".*

In addition to the above said facts, the respondent in its written statement also given the parawise reply to the case as set up by the claimant in his statement of claim.

Sri Adarsh Jadghari has submitted that before deciding the matter in question on merit, the question "whether the claim petition filed by the claimant on 28.02.2011 as per the provisions of section 2A (2) of the Act, aggrieved by the order of termination/retrenchment dated 21.12.2001 is barred by the period of limitation as provided u/s 2A(3) of the Act or not?"

Sri Adarsh Jadghari in support of his argument submits, admittedly as per the case of the claimant his services were terminated on 21.12.2001, aggrieved by the same he filed present industrial dispute u/s 2A (2) of the Act; however, u/s 2A (3) of the Act the period of limitation is provided for three years, from the date of retrenchment/termination, so, the present claim petition is barred by the period of limitation as provided u/s 2A (3) of the Act, liable to be dismissed.

In rebuttal, reliance has been placed as pleaded in the statement of claim and submits that in view of the facts as stated hereinabove especially in paragraph 27 & 28, which are quoted herein below:

> *"27. That since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.*
>
> *28. That in pursuance thereof, the workman concerned approaching the Hon'ble Tribunal for the adjudication of the industrial disputes as prevalent between the workman and the employers."*

The present claim petition filed u/s 2 (2) of the Act is maintainable and the arguments as raised by the learned counsel for respondent that same is barred by the period limitation is devoid of merit, be rejected.

I have heard the learned counsel for opposite party/HAL and gone through the record.

Before deciding the same it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947 in brief which are that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, upto a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but a continuous demand for fair retrun to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc.(***Hariprasad Vs . A. D. Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organisation also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take u[an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

"*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No.24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No.24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for

adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."

Now the core question to be considered is that in view of the facts which are stated hereinabove, that admittedly the services of applicant was terminated on 21.12.2001, thereafter he has filed the present case before this Tribunal u/s 2A of the Act on 28.02.2011 on the grounds as taken by him in his claim petition, is maintainable or barred by the period of limitation as provided u/s 2A(3).

Answer to the said question find place in the judgment passed by Hon'ble the Karnataka High Court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041***, relevant potion quoted as under:

"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.

20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:

"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."

21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.

8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.

The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.

9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.

10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU /TN/6691 /2020*** Hon'ble the High Court of Madras has held as under:

"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)

(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)

(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)

(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45

days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and positon of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755***.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".

In the case of ***Union of India Vs. Hansoli Devo (2002) 7 SCC 273***, Hon'ble the Supreme Court observed as under:-

"9.It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."

In the case of ***Patango Kadam Vs. Prithviraj Sayajiro Yadav Deshmukh (2001) 3 SCC 594***, took the view:-

"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."

Also, Hon'ble the Supreme Court in the case of ***Popat Bahiru Govardhane & others vs. Special Land Acquisition Officer & another (2013) 10 SCC 765*** has held as under:

"16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."

(See Martin Burn Ltd. v. Corpn. of Calcutta10, AIR p. 535, para 14 and Rohitash Kumar v. Om Prakash Sharma11.)

Reverting to the facts of the present case, as per the admitted position, the services of the workman was terminated on 21.12.2001 and the same has been challenged by him by filing the present industrial dispute on 28.02.2011.

So, keeping in view the above said facts as well as the workman cannot derive any benefit from the facts on which he has approved the Tribunal after expiry of period three years from the date of his termination, because his services were terminated on 21.12.2001 and filed the present case on 28.02.2011 u/s 2A (2) of the Act, as such, the claim petition is barred by the period of limitation provided u/s 2A (3), liable to be rejected.

Accordingly, the same is rejected on the ground that same is barred by period of limitation as per section 2A (3) of the Industrial Disputes Act, 1947, with liberty to the claimant to pursue its case before appropriate forum as per law.

Award as above.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 22 मई, 2023

का.आ. 860.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, हिंदुस्तान एयरोनॉटिक्स लिमिटेड, लखनऊ मंडल, लखनऊ; महाप्रबंधक, हिंदुस्तान एयरोनॉटिक्स लिमिटेड, लखनऊ मंडल, लखनऊ; मेसर्स शाह बंधु, द्वारा -श्री योगेंद्र प्रसाद शाह, स्वच्छता ठेकेदार, 504, विमान नगर ,हरजेंद्र नगर, कानपुर; ग्रुप-4 फैसिलिटी सर्विस द्वारा -श्री नवल कपूर, निदेशक कार्मिक, गोमती नगर, लखनऊ, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री राम खेलावन, कामगार,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट(संदर्भ संख्या 82/2011) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 25/05/2023 को प्राप्त हुआ था।

[सं. एल-42025-07-2023-108-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 22nd May, 2023

S.O. 860.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 82/2011) of the Central Government Industrial Tribunal cum Labour Court–Lucknow, as shown in the Annexure, in the Industrial dispute between the employers in relation to The The General Manager, Hindustan Aeronautics Limited, Lucknow Division, Lucknow ; The General Manager, Hindustan Aeronautics Limited, Lucknow Division, Lucknow ; M/s Shah Bandhu, through Shri Yogendra Prasad Shah,Sanitation Contractor, 504, Viman Nagar, Harjendra Nagar, Kanpur M/s Group -4 Facilities Service, through Shri Nawal Kapoor, Director Personnel, Gomti Nagar, Lucknow, and Shri Ram Khelawan, Worker, which was received along with soft copy of the award by the Central Government on 25/05/2023.

[No. L-42025-07-2023-108 -IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT

LUCKNOW

Present: JUSTICE ANIL KUMAR**,** Presiding Officer

I.D. No. 82/2011

BETWEEN

Ram Khelawan, Son of Late Sahabdeen,
Resident of Village Chamraukha, Sector 14, Near Pani ki tanki,
Ismailganj, Faizabad Road, Lucknow.

AND

1. Hindustan Aeronautics Limited,
Lucknow Division, Lucknow through its General Manager.

2. General Manager, Hindustan Aeronautics Limited,
Lucknow Division, Lucknow.

3. M/s Shah Bandhu, through Sri Yogendra Prasad Shah,
Sanitation Contractor, 504, Viman Nagar, G.T. Road.
Harjendra Nagar, Kanpur.

4. M/s Group -4 Facilities Service, through Sri Nawal Kapoor,
Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow.

AWARD

On 28.02.2010 the claimant/workman has field the ID case No. 82/2011 as per the provisions of Section 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

Facts of the case:

Hindustan Aeronautics Limited, Lucknow Division (hereinafter referred to as Establishment), is a factory registered under the provisions of the Factories Act, which is situated at Faizabad Road, Lucknow and the sanitation work of the premises of the Establishment as well as Plant and Machinery installed at the factory premises is a perennial as well regular nature of job.

Establishment is an Engineering Industry and the Government has issued a notification dated 24.04.1990 under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 after the recommendation of Contract Labour Advisory Board, whereby 18 works of the Engineering Industry, which are regular or perennial in nature has been prohibited.

However, it was the prevalent practice in establishment that they employed the contract labour for sanitation work of the establishment/premises despite the fact that the sanitation work was regular in nature; and the claimant/workman was working in the establishment right from the very beginning i.e. from the date, the factory was established and continuously worked till the date of termination i.e. 21.12.2001.

As per the case workman order of termination dated 21.12.2001 by which his services in an illegal and unjustified manner was terminated, inasmuch as in establishment of the employers there were more than 100 workmen employed as such the compliance of Section 25-N of the Industrial Disputes Act was necessary but before terminating the services of the workmen, the employers have not complied with the provisions of Section 25-N of the Industrial Disputes Act.

Further, the services of the workman have been terminated by the principal employer not by the contractor and the work which were being performed by the concerned workman still exist with employers and the same is being carried out by employing new workmen on contract basis.

In the claim petition it has been pleaded that earlier the workmen's Union in Establishment i.e. Hindustan Aeronautics Karamchari Sabha, raised the dispute of the workman along with some other workmen before the State Government which, was referred for adjudication before the Industrial Tribunal (II), U.P., Lucknow, registered before Industrial Tribunal (II), U.P., Lucknow as Adj. Case No.: 126 of 2002.

However, on account of the fact that the workman along with some other workmen were not satisfied with the pairavi of the Union as such an authority letter was filed along with an application by 20 workmen amongst the concerned workman to represent the said case but the Union, filed objection that as applicants who have filed the application are not party in the said case as such they are not entitled to represent the case. By an order dated 10.03.2010, the Hon'ble Presiding Officer held that the workmen are not satisfied with the proceedings through Union, they can raise separate dispute "under the provisions of Act.

Thereafter, an application was filed by 36 workmen including the claimant/workman on 10.07.2010 before, the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow for deletion of the names of the workmen from the reference order so that they may be in position to raise fresh industrial dispute before the competent Forum and the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow after hearing the parties concerned was pleased to allow the said application except three whose names were not mentioned in reference order.

In pursuance to order dated 20.07.2010 the workman concerned along with 32 other workman filed an application before the Regional Labour Commissioner (Central), Lucknow which was registered as Case No. LKO-8(2-32)/2010: Laxmi Narain and 32 others Vs. General Manager, Hindustan Aeronautics Limited and others.

Thereafter, Regional Labour Commissioner (Central), Lucknow, called upon the parties for conciliation proceedings and in pursuance thereof Hindustan Aeronautics Limited appeared before him and filed their objections and due to the negative attitude of the employers, no settlement could be arrived between the parties.

Since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.

In view of above said factual background the present case has been filed u/s 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) with following prayer:

> *"WHEREFORE, it is most respectfully prayed that the Hon'ble Court may be pleased to declare that the action of the management in terminating the services of workman with effect from 21.12.2001 is neither legal nor justified and accordingly the workman concerned is entitled to get reinstatement in service together with entire consequential benefits including back wages and other service benefits, in the interest of justice."*

On behalf the respondent written statement has been filed on 15.05.2012 in which following preliminary objection was taken:

> *"1. That the aforesaid ID Case No.82/2011 is not maintainable as per the provisions of ID Act 1947 (as mended by ID (Amendment) Act 2010) because the same is barred by limitation U/S 2A(3) of the ID Act (Amendment 2010) which is quoted as below:*
>
> > *2A(3) "the application referred to in sub section 2 shall be made to Labour Court or Tribunal before the expiry of 3 years from the date of discharge, dismissal, retrenchment or otherwise termination service as specified in sub section 1".*

In addition to the above said facts, the respondent in its written statement also given the parawise reply to the case as set up by the claimant in his statement of claim.

Sri Adarsh Jadghari has submitted that before deciding the matter in question on merit, the question "whether the claim petition filed by the claimant on 28.02.2011 as per the provisions of section 2A (2) of the Act, aggrieved by the order of termination/retrenchment dated 21.12.2001 is barred by the period of limitation as provided u/s 2A(3) of the Act or not?"

Sri Adarsh Jadghari in support of his argument submits, admittedly as per the case of the claimant his services were terminated on 21.12.2001, aggrieved by the same he filed present industrial dispute u/s 2A (2) of the Act; however, u/s 2A (3) of the Act the period of limitation is provided for three

years, from the date of retrenchment/termination, so, the present claim petition is barred by the period of limitation as provided u/s 2A (3) of the Act, liable to be dismissed.

Sri D.K. Gupta, learned counsel for claimant, rebutting the said contention has placed reliance as pleaded in the statement of claim and submits that in view of the facts as stated hereinabove especially in paragraph 27 & 28, which are quoted herein below:

> *"27. That since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.*
>
> *28. That in pursuance thereof, the workman concerned approaching the Hon'ble Tribunal for the adjudication of the industrial disputes as prevalent between the workman and the employers."*

The present claim petition filed u/s 2 (2) of the Act is maintainable and the arguments as raised by the learned counsel for respondent that same is barred by the period limitation is devoid of merit, be rejected.

I have heard the learned counsel for parties and gone through the record.

Before deciding the same it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947 in brief which are that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, upto a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words, industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but a continuous demand for fair return to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc.(***Hariprasad Vs. A.D.Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organization also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take u[an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

"*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No. 24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No.24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."

Now the core question to be considered is that in view of the facts which are stated hereinabove, that admittedly the services of applicant was terminated on 21.12.2001, thereafter he has filed the present case before this Tribunal u/s 2A of the Act on 28.02.2011 on the grounds as taken by him in his claim petition, is maintainable or barred by the period of limitation as provided u/s 2A(3) of the Act.

Answer to the said question find place in the judgment passed by Hon'ble the Karnataka High Court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041***, relevant potion quoted as under:

"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.

20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:

> *"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."*

21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.

8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.

The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.

9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.

10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)

(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)

(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)

(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and positon of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755***.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

> *"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".*

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

> *"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.*
>
> *25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".*

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

> *"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".*

In the case of ***Union of India Vs. Hansoli Devo (2002) 7 SCC 273***, Hon'ble the Supreme Court observed as under:-

> *"9.It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."*

In the case of ***Patango Kadam Vs. Prithviraj Sayajiro Yadav Deshmukh (2001) 3 SCC 594***, took the view:-

> *"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."*

Also, Hon'ble the Supreme Court in the case of ***Popat Bahiru Govardhane & others vs. Special Land Acquisition Officer & another (2013) 10 SCC 765*** has held as under:

"16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."

(See Martin Burn Ltd. v. Corpn. of Calcutta10, AIR p. 535, para 14 and Rohitash Kumar v. Om Prakash Sharma11.)

Reverting to the facts of the present case, as per the admitted position, the services of the workman was terminated on 21.12.2001 and the same has been challenged by him by filing the present industrial dispute on 28.02.2011.

So, keeping in view the above said facts as well as the workman cannot derive any benefit from the facts on which he has approved the Tribunal after expiry of period three years from the date of his termination, because his services were terminated on 21.12.2001 and filed the present case on 28.02.2011 u/s 2A (2) of the Act, as such, the claim petition is barred by the period of limitation provided u/s 2A (3) of the Act, liable to be rejected.

Accordingly, the same is rejected on the ground that same is barred by period of limitation as per section 2A (3) of the Industrial Disputes Act, 1947, with liberty to the claimant to pursue its case before appropriate forum as per law.

Award as above.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 22 मई, 2023

का.आ. 861.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उप. निदेशक जनरल (कार्यालय प्रमुख), दूरदर्शन केंद्र, 24 अशोक मार्ग, लखनऊ; प्रबंधक, हाईटेक सुरक्षा गार्ड सेवाएं, 18/345, दीनदयाल नगर, खदरा, लखनऊ, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री प्रेम सागर विश्वकर्मा, कामगार,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 22/2017) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ25/05/2023 को प्राप्त हुआ था ।

[सं. एल-42025-07-2023-107-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 22nd May, 2023

S.O. 861.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 22/2017) of the Central Government Industrial Tribunal cum Labour Court–Lucknow, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Dy. Director Genedral (Head of Office), Doordarshan Kendra, 24 Ashok Marg, Lucknow ; The Manager, Hitech Security Guard Services, 18/345, Deendayal Nagar, Khadra, Lucnow, and Shri Prem Sagar Vishwakarma, Worker, which was received along with soft copy of the award by the Central Government on 25/05/2023.

[No. L-42025-07-2023-107 -IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT LUCKNOW

Present: JUSTICE ANIL KUMAR**,** Presiding Officer

I.D. No. 22/2017

BETWEEN

Prem Sagar Vishwakarma, S/o Sri Ram Asre
R/o E 6/N2/25, Sector-N, Aliganj, Lucknow.

AND

1. Dy. Director Genedral (Head of Office), Doordarshan Kendra, 24 Ashok Marg, Lucknow.
2. Manager, Hitech Security Guard Services, 18/345, Deendayal Nagar, Khadra, Lucnow.

AWARD

On 21.08.2017 the claimant/workman has field the ID case No. 22/2017 as per the provisions of Section 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), challenging the impugned order of termination dated 30.12.2013. On behalf of the respondent a preliminary objection has been raised that as services of claimant/workman were terminated on 30.12.2013; however, he filed present adjunction case u/s 2A (2) of the Act on 21.08.2013; which is barred by the period of limitation as provided u/s 2A (3) of the Act, as such, the same may be dismissed.

I have heard learned counsel for parties; on the above said point/preliminary objection.

Before deciding the same it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947 in brief which are that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, upto a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(iii) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words, industrial peace is very necessary for the vitality of industry.

(iv) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but a continuous demand for fair return to labour expressed in varied forms e.g. (a) increase in

wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc.(***Hariprasad Vs. A.D.Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organization also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take u[an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

"*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No. 24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No.24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the

date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."

Now the core question to be considered is that in view of the facts which are stated hereinabove, that admittedly the services of applicant was terminated on 30.12.2013, thereafter he has filed the present case before this Tribunal u/s 2A of the Act on 21.08.2017 on the grounds as taken by him in his claim petition, is maintainable or barred by the period of limitation as provided u/s 2A (3) of the Act.

Answer to the said question find place in the judgment passed by Hon'ble the Karnataka High Court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041***, relevant potion quoted as under:

"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.

20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:

"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."

21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.

8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.

The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.

9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.

10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)

(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)

(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)

(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application

under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and positon of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755***.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".

In the case of ***Union of India Vs. Hansoli Devo (2002) 7 SCC 273***, Hon'ble the Supreme Court observed as under:-

"9.It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."

In the case of ***Patango Kadam Vs. Prithviraj Sayajiro Yadav Deshmukh (2001) 3 SCC 594***, took the view:-

"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."

Also, Hon'ble the Supreme Court in the case of ***Popat Bahiru Govardhane & others vs. Special Land Acquisition Officer & another (2013) 10 SCC 765*** has held as under:

"16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."

(See Martin Burn Ltd. v. Corpn. of Calcutta10, AIR p. 535, para 14 and Rohitash Kumar v. Om Prakash Sharma11.)

Reverting to the facts of the present case, as per admitted position which emerged out that, the services of the workman was terminated on 30.12.2013, challenged by him by filing the present industrial dispute on 21.08.2017, so, the present case/claim petition is barred by the period of limitation provided u/s 2A (3) of the Act, liable to be rejected.

Accordingly, the same is rejected being barred by period of limitation as per section 2A (3) of the Industrial Disputes Act, 1947, with liberty to the claimant to pursue its case before appropriate forum/court as per law.

Award as above.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 24 मई, 2023

का.आ. 862.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार निदेशक, मैसर्स क़्वालिटी सर्विसेज एंड सॉल्यूशन, गोवा,के प्रबंधतंत्र के संबद्ध नियोजकों और महासचिव, मर्मगोवा वाटरफ्रंट वर्कर्स यूनियन, वास्को-द-गामा, गोवा, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-1 मुंबई के पंचाट (संदर्भ संख्या NTB -1/20 of 2013) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 24.05.2023 को प्राप्त हुआ था।

[सं. एल-42011/17/2013-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 24th May, 2023

S.O. 862.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. NTB-1/20 of 2013) of the Central Government Industrial Tribunal cum Labour Court - I Mumbai as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director, M/s Quality Services & Solution,Goa and The General Secretary, Marmagoa Waterfront Workers` Union, Vasco-da-Gama, Goa, which was received along with soft copy of the award by the Central Government on 24.05.2023.

[No. L- 42011/17/2013-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, MUMBAI PRESENT (JUSTICE K.D.BHUTIA)

Ref No. CGIT/20 of 2013

Date: 29.12.2022

Both sides are found absent when the matter is called.

Records shows that this reference case is of 2013. Unfortunately, even after lapse of more than 9 years, the concerned workman Shri Shrikrishna D. Kankonkar or his union has failed to file statement of claim. Record shows notice of appearance has been duly served upon the union. From such conduct on the part of union / workman it can be safely inferred the union / concerned workman is no more interested to proceed further with this present reference case referred under L-42011/17/2013-IR (DU) dated 12.04.2014.

Since there is no statement of claim being filed by the union, it is presumed that there is no cause of action to the alleged dispute. Therefore, this reference case is disposed of.

Award is passed accordingly.

Send copy of this order to be Ministry of Labour for doing needful as per law.

Justice K.D BHUTIA, Presiding Officer

नई दिल्ली, 24 मई, 2023

का.आ. 863.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार निदेशक/पंजीकृत, राष्ट्रीय औद्योगिक अभियांत्रिकी संस्थान,विहार लेक रोड, मुंबई,के प्रबंधतंत्र के संबद्ध नियोजकों और श्री कमलाकर रघुनाथ पाटिल, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 मुंबई के पंचाट (संदर्भ संख्या CGIT -2/6 of 2019) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 24.05.2023 को प्राप्त हुआ था।

[सं. एल-42025-07-2023-92-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 24th May, 2023

S.O. 863.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT -2/6 of 2019) of the Central Government Industrial Tribunal cum Labour Court - II Mumbai as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director/Registered, National Institute of Industrial Engineering, Vihar Lake Road, Mumbai, and Shri Kamlakar Raghunath Patil, Worker, which was received along with soft copy of the award by the Central Government on 24.05.2023.

[No. L-42025-07-2023-92 -IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

The Director/Registered,National Institute of Industrial Engineering,
(NITIE Campus), Vihar Lake Road, Mumbai – 400 087. …First Party.

AND

Kamlakar Raghunath Patil, C/o. Shramjivi Kamgar Union,
Near Panchal Steel Industries, Next to Eco Space,
Mogra village road, Andheri (E), Mumbai – 400 069. …Second Party.

Dated: 27.02.2023

AWARD

Present: Mr. Kamlakar Raghunath Patil, Second Party Workman in person.

None for the First Party Management.

The present application under Section 2-A of the Industrial Disputes Act, 1947 is pending before this Court for 25.04.2023.

However, the workman Mr. Kamlakar Raghunath Patil has come present in person and filed an application for withdrawal of the present application. In view of his prayer for preponment, the next date is preponed to today. His statement has been recorded to the following effect:

> "It is stated that I have settled my grievance with the First Party management out of court and, therefore, my present application under Section 2-A of the Industrial Disputes Act, 1947 may be dismissed as withdrawn."

In view of the above statement, the present application under Section 2-A of the Industrial Disputes Act, 1947, is dismissed as withdrawn and 'no dispute' award is passed.

File be consigned to record room.

LAXMI NARAIN JINDAL, Presiding Officer

नई दिल्ली, 24 मई, 2023

का.आ. 864.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार निदेशक/पंजीकृत, राष्ट्रीय औद्योगिक अभियांत्रिकी संस्थान,विहार लेक रोड, मुंबई,के प्रबंधतंत्र के संबद्ध नियोजकों और श्री अशोक जाधव, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 मुंबई के पंचाट (संदर्भ संख्या CGIT -2/5 of 2019) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 24.05.2023 को प्राप्त हुआ था।

[सं. एल-42025-07-2023-91-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 24th May, 2023

S.O. 864.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT -2/5 of 2019) of the Central Government Industrial Tribunal cum Labour Court - II Mumbai as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director/Registered, National Institute of Industrial Engineering, Vihar Lake Road, Mumbai, and ShriAshok Jadhav, Worker, which was received along with soft copy of the award by the Central Government on 24.05.2023.

[No. L-42025-07-2023-91 -IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

The Director/Registered,National Institute of Industrial Engineering,
(NITIE Campus), Vihar Lake Road, Mumbai – 400 087. …First Party.

AND

Ashok Jadhav, C/o. Shramjivi Kamgar Union,
Near Panchal Steel Industries, Next to Eco Space,
Mogra village road, Andheri (E), Mumbai – 400 069. …Second Party.

Dated: 27.02.2023

AWARD

Present: Mr. Ashok Jadhav, Second Party Workman in person.
None for the First Party Management.

The present application under Section 2-A of the Industrial Disputes Act, 1947 is pending before this Court for 25.04.2023.

However, the workman Mr. Ashok Jadhav has come present in person and filed an application for withdrawal of the present application. In view of his prayer for preponment, the next date is preponed to today. His statement has been recorded to the following effect:

> "It is stated that I have settled my grievance with the First Party management out of court and, therefore, my present application under Section 2-A of the Industrial Disputes Act, 1947 may be dismissed as withdrawn."

In view of the above statement, the present application under Section 2-A of the Industrial Disputes Act, 1947, is dismissed as withdrawn and 'no dispute' award is passed.

File be consigned to record room.

LAXMI NARAIN JINDAL, Presiding Officer

नई दिल्ली, 24 मई, 2023

का.आ. 865.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार हिंदुस्तान एयरोनॉटिक्स लिमिटेड, के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-1 मुंबई के पंचाट (संदर्भ संख्या NTB-01 of 2020) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 24.05.2023 को प्राप्त हुआ था।

[सं. एल-14011/22/2016--आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 24th May, 2023

S.O. 865.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. NTB-01 of 2020) of the Central Government Industrial Tribunal cum Labour Court - I Mumbai as shown in the Annexure, in the Industrial dispute between the employers in relation to Hindustant Aeronautics Ltd. and Their Workmen, which was received along with soft copy of the award by the Central Government on 24.05.2023.

[No. L- 14011/22/2016-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE NATIONAL INDUSTRIAL TRIBUNAL, MUMBAI

Present: Justice K.D. BHUTIA**,** Presiding Officer

REFERENCE No. NTB- 01 of 2020

PARTIES:-

HINDUSTANT AERONAUTICS LTD. : **MANAGEMENT**

V/s.

THEIR WORKMEN **:** **SECOND PARTY**

APPEARANCES:

FOR THE MANAGEMENT	: Ms. Geeta Raju Advocate
FOR THE SECOND PARTY	: Absent

Mumbai, dated the 29th December, 2022.

AWARD

Management is present through its learned counsel Ms. Geeta Raju.

None appear on behalf of the union when the matter is called for hearing.

Record shows union has stopped appearing and taking part in the hearing of the present reference case since 08.10.2021. Such conduct on the part of the union shows that union is no more interested to proceed with the hearing of the case or conduct this reference case.

Therefore, invoking Rule 22 of I.D. (Central) Rules, 1957, this tribunal decided to proceed with the hearing of this case.

The Govt. of India, Ministry of Labour has initially referred this reference case for adjudication of the issue "Is the management of HAL justified in unilaterally modifying the leave encashment rules provided in the mutually agreed settlement, which will adversely affect the workman vide its letter No. L-14011/22/2016-IR (DU) dated 07.07.2017. Subsequently, Ministry issued a corrigendum reference order vide its letter No. L-14011/22/2016-IR (DU) dated 24.10.2017 and corrected the issue for adjudication as follow:

"Whether the action of management of HAL, to unilaterally modify the leave encashment rules, 1988 provided for in the mutually agreed settlement in respect of calculation of leave encashment considering 30 days in a month instead of 26 days a month?"

On receiving such reference, parties were duly notified. The union has filed its statement of claim and management has filed its written statement.

The union in its claim statement has alleged that the workmen who are working for HAL is governed by the revised Leave Rules of 1988 which was framed as per the settlement that was arrived in the course of conciliation proceedings between the management and union. Appendix – I, clause 7 provides for encashment of vacation leave and the manner of computation of leave encashment amount and which read as "For the purposes of computing the encashment amount, the rate of encashment per day of leave shall be first arrived at. For this purpose, the monthly rate of basic pay (including special pay, personal pay, if any) and Dearness Allowance shall be added and the sum so arrived at shall then be divided by 26. The resultant figure shall be the rate of encashment per day of leave. The number of days of leave to be encashed should then be multiplied by this ratio of encashment per day for arriving at the encashment amount payable."

By espousing the present dispute, it has alleged the management wants to change the method of calculations. The management while calculating wages for encashment of leave wants to take 30 days for division instead of 26 days as stipulated in the revised Leave Rules of 1988.

On the other hand, the management in its W.S. has admitted that as per settlement dated 14.06.1988 between management and its workmen, it was settled for encashment of vacation leave; basic pay and dearness allowance are added and the total of the same is divided by 26 to arrive per day wage for the calculation of encashment.

It has also admitted that the management had issued a notice under section 9A of the I.D. Act, 1947, being No. BC/A/2038/1093 dated 16.05.2007 by giving 2 months notice to terminate the settlement under section 19 (2) of the Act, so the day's wage can be arrived by dividing basic and D.A. with 30 instead of 26 days. But at the same time it has contended that such notice cannot take away the benefit granted under the settlement dated 14.06.1988 as in order to modify the settlement dated 1988, a new settlement is required to be arrived between the management and the unions of the workmen.

It has also been contended that different trade unions raised industrial disputes immediately upon issuance of notice under section 9A on 16.05.2007 and as such the management withdrew the disputed notice dated 2007 from its all Divisions located across India and terminated the memorandum of settlement which it had with various Divisions in the year 2009. Therefore, it has alleged no more there exist the disputed notice

under section 9A of the Act dated 16.05.2007 or any settlement it had with its different Divisions in the year 2009 on the basis of such notice, the claim and case of the unions is not maintainable as there exist no cause of action to raise the dispute under reference.

At the time of hearing learned counsel Ms. Geeta Raju submitted that Leave Rules 1988 for its workmen issued under Personnel Circular No. 582 dated 15.07.1988 still in existence as there is no fresh settlement between the management and workmen / unions for modification of the same. The workmen who are governed by the HAL Leave Rules, 1988 are still enjoying the leave encashment benefit as provided therein. Thereby, she prays for passing no dispute award.

Since the authorized representative of the management who was present along with the learned counsel Ms. Raju submit that Leave Rules 1988 is still in force and no modification as intended by the management in the year 2007 had taken place till date, this tribunal holds the reference is not maintainable as there exist no cause for raising the dispute as referred by the Ministry of Labour to this tribunal for adjudication.

Accordingly, no dispute award is passed.

The Ref. No. NTB – 01 of 2020 is disposed of.

Send copy of this order to the Ministry of Labour for doing needful.

Justice K.D. BHUTIA, Presiding Officer

नई दिल्ली, 25 मई, 2023

का.आ. 866.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आन्द्रा बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध मनिर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रमन्यायालय, चेन्नई के पंचाट (48/2019) प्रकाशित करती है।

[सं. एल-12012/19/2019 -आई आर(बी-II)]

सलोनी, उप निदेशक

New Delhi, the 25th May, 2023

S.O. 866.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.48/2019) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Chennai as shown in the Annexure, in the industrial dispute between the management of Andhra Bank and their workmen.

[No. L- 12012/19/2019 -IR (B-II)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CGIT-CUM-LABOUR COURT & EPF APPELLATE TRIBUAL CHENNAI

Monday, the 27th June, 2022

Present: DIPTI MOHAPATRA, LL.M. Presiding Officer

ID No. 48/2019

BETWEEN

Sri Dinesh Kumar
S/o A. Ranganathan
72, A-Block, Munuswamy Pillai Street
Dr. Ambedkar Bridge
Mylapore
Chennai-600004 : 1st Party/Petitioner

AND

The Chief Manager
Andhra Bank, Zonal Office
Linghi Chetty Street
Chennai-600001 : 2nd Party/1st Respondent

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12012/19/2019-IR (B.II) dtd. 21.05.2019 referred the following Industrial Dispute of this Tribunal for adjudication.

The schedule mentioned in that order is:

"**Whether the demand of Sri R. Dinesh Kumar Sub-Staff of Andhra Bank for reinstatement into service w.e.f. 07.12.2018, the date of termination (stated to be working since 28.04.2016 to 07.12.2018) with all attendant benefits is legal and justified? If not, to what relief is the workman entitled to?"**

2. A little reference to the backdrop of the case needs mention that the Petitioner moved the Tribunal vide 2A Application on dtd. 14.03.2019 which was registered as ID 48/2019 and on dtd. 02.04.2019 order was passed for issuance of notice listing the case to 30.09.2019. In between the above reference from the Appropriate Government was received on 03.06.2019. Accordingly, the matter was listed to 15.07.2019 for hearing vide note dtd. 21.06.2019. It reveals that after hearing of the parties the 2A Application was clubbed with the Reference unchanging the ID Number as already registered vide Order dtd. 05.08.2019 and the 2A Application since considered as Claim Statement, the Respondent was directed to file Counter Statement fixing the case to 30.09.2019. On that day, the Respondent filed the Counter Statement. The case is listed to 05.11.2019 for filing of affidavit evidence of the Petitioner. The Petitioner failed to file the same resulting to several adjournments (13 dates) till 30.11.2021. The Petitioner nor the Authorized Representative appeared on any of the date to file the Affidavit Evidence. However, without resorting to any coercive action against the Petitioner, the Tribunal viewed sympathetically and suo-moto afforded so many adjournments considering the prevailed tough situation of Pandemic COVID-19. The Petitioner did not turn up.Not a single petition was filed for adjournment. However, for the ends of justice the First party Petitioner was afforded with some more opportunities by re-listing the case on 05.01.2022and to 04.02.2022. Neither the Petitioner nor his Authorized Representative appeared or filed the Claim Statement.

3. As such in view of the discussion held in preceding paragraphs it appears the Petitioner is not interested to proceed with the case. The case is simply dragged to an extend of almost 3 years only due to non-cooperation of the Petitioner in appearing and participating in the proceeding. This Tribunal is constrained to conclude the proceeding as it deems there exists no dispute in between the parties for adjudication as per the reference.

In the result the ID case stands dismissed.

An award is passed accordingly.

DIPTI MOHAPATRA, Presiding Officer

नई दिल्ली, 25 मई, 2023

का.आ. 867.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आन्द्रा बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध मनिर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रमन्यायालय, चेन्नई के पंचाट (46/2019) प्रकाशित करती है।

[सं. एल-12012/17/2019 -आईआर(बी-II)]

सलोनी, उप निदेशक

New Delhi, the 25th May, 2023

S.O. 867.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.46/2019) of the Cent.Govt.Indus.Tribunal-cum-Labour Court

Chennai as shown in the Annexure, in the industrial dispute between the management of Andhra Bank and their workmen.

[No. L- 12012/17/2019-IR (B-II)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CGIT-CUM-LABOUR COURT & EPF APPELLATE TRIBUAL CHENNAI

Monday, the 27th June, 2022

Present: DIPTI MOHAPATRA, LL.M., Presiding Officer

ID No. 46/2019

BETWEEN

Sri S. Prasanth
S/o Sigamani
No. 8/12, Gurusamy Nagar
4th Street, Pulianthope
Chenai-600012 : 1st Party/Petitioner

AND

1. The Chief Manager
Andhra Bank, Zonal Office
Linghi Chetty Street
Chennai-600001 : 2ND Party/1st Respondent

2. The Senior Manager (HR)
Andhra Bank, Zonal Office
Linghi Chetty Street
Chennai-600001 : 2nd Party/2nd Respondent

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12012/17/2019-IR (B.II) dtd. 20.05.2019 referred the following Industrial Dispute of this Tribunal for adjudication.

The schedule mentioned in that order is:

"**Whether the demand of Sri S. Prasanth, Sub-Staff of Andhra Bank for reinstatement into service w.e.f. 31.01.2017 (stated to be working since 19.12.2011 to 31.01.2017) with all attendant benefits is legal and justified? If not, to what relief is the workman entitled to?**"

2. A little reference to the backdrop of the case needs mention that the Petitioner moved the Tribunal vide 2A Application (S.R. No. 209/19) dtd. 14.03.2019 raising the dispute. The above reference dtd. 20.05.2019 was received on 03.06.2019 from the Appropriate Government, the dispute on reference is registered as ID No. 46/2019. The Application since was not registered as ID case, due order was passed to club up with the reference under ID 46/2019. The 2A Application was considered as the Claim Statement and accordingly Respondent filed Counter statement without any delay.

3. The notices were issued to both the parties for their appearance fixing the case to 30.04.2019. None of the parties appeared. The case was posted to several dates in the year 2019 i.e. to 11.06.2019, 15.07.2019, 05.08.2019, 26.08.2019, 30.09.2019 and 05.11.2019. More opportunities wee afforded as adjournments in the year 2020 i.e. 03.01.2020, 06.02.2020 and 06.02.2020. The Petitioner nor his Authorized Representative appeared on those days. However, owing to Pandemic COVID-19 few more adjournments were afforded to the Petitioner for appearance i.e. on 15.04.2020, 04.08.2020 and 26.10.2020. The Petitioner nor the Authorized

Representative appeared. Without resorting to any coercive action against the First Party Petitioner, the Tribunal viewed sympathetically and suo-moto afforded 5 adjournments in the year 2021 considering the prevailed tough situation of Pandemic COVID-19. The Petitioner did not turn up. Not a single petitioner was filed for adjournment. However, for the ends of justice the First party Petitioner was afforded with some more opportunities by re-listing the case on 04.01.2020 and 02.02.2022. Neither the Petitioner nor his Authorized Representative appeared or filed the Claim Statement.

4. As such in view of the discussion held in preceding paragraphs it appears the Petitioner is not interested to proceed with the case. The case is simply dragged to an extend of almost 3 years only due to non-cooperation of the Petitioner in appearing and participating in the proceeding. This Tribunal is constrained to conclude the proceeding as it deems there exists no dispute in between the parties for adjudication as per the reference.

In the result the ID case stands dismissed.

An award is passed accordingly.

DIPTI MOHAPATRA, Presiding Officer

नई दिल्ली, 25 मई, 2023

का.आ. 868.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केंद्रीय माध्यमिक शिक्षा बोर्ड, शिक्षा केंद्र, 2- सामुदायिक केंद्र, प्रीत विहार, दिल्ली; ठेकेदार मैसर्स बी. के. एंटरप्राइजेज, मादीपुर, दिल्ली, के प्रबंधतंत्र के संबद्ध नियोजकों और महासचिव, दिल्ली कार्यालय और स्थापना कर्मचारी संघ, आईटीओ, नई दिल्ली,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ संख्या 20/2016) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 24.05.2023 को प्राप्त हुआ था।

[सं. एल-42011/19/2016-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 25th May, 2023

S.O. 868.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 20/2016) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to Central Board of Secondary Education, Sikha Kendra, 2- Community Centre, Preet Vihar, Delhi ; The Contractor M/s B. K Enterprises, Madi Pur, Delhi, and The General Secretary, Delhi Offices And Establishment Employees Union, ITO,New Delhi, which was received along with soft copy of the award by the Central Government on 24.05.2023.

[No. L-42011/19/2016 -IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 20/2016

Date of Passing Award- 8th May, 2023

Between:

The General Secretary,
Delhi Offices And Establishment Employees Union,
13-A, Rouse Avenue, ITO,
New Delhi-110002. … Workman

Versus

1. Central Board of Secondary Education,
Sikha Kendra, 2- Community Centre, Preet Vihar,
Delhi-110092.

2. Contractor
M/s B. K Enterprises,
B-578, Madi Pur,
Delhi-110063. … Managements

Appearances:-

Shri B.K Prasad, Ld .A/R for the claimant.

Shri M.A Niyazi, Ld. A/R for the management CBSE

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Central Board of Secondary Education, Sikha Kendra, 2-Community Centre, Preet Vihar, Delhi-110092 and the Contractor M/s B.K Enterprises,B-578, Madi Pur,Delhi-110063 and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-42011/19/2016 (IR(DU)) dated 30.03.2016 to this tribunal for adjudication to the following effect.

> **"Whether termination of Sh. Inderjeet Singh S/o Sh. Digamber Singh by the management of Central Board of Secondary Education/ B. K Enterprises, w.e.f 16.04.2015 without complying with the provisions of ID Act, 1947 is just, fair and legal? If not what relief the workman concerned is entitled to?"**

In the claim petition the claimant has stated that he started working for the mgt no. 1 in the year 2011 in the post of pump operator and his last drawn salary was 7400/- p.m . When he was discharging his work with dedication and continuously the mgt was treating him with unfairness as no letter of appointment, wage slip , leave book etc were granted to him. The benefit of EPF and ESI was not extended to him. Suddenly, the mgt no. 1 outsourced the service of the claimant and the persons like him by introducing a contractor who is the mgt no. 2. The contract between the mgt no. 1 and 2 was sham and intended to camouflage the right of the claimant. Against the will of the claimant his name was shown in the record of mgt no. 2 even though he was working under the supervision and control of mgt no. 1. When he raised objection, his service was verbally terminated on 15.04.2015. The claimant raised a dispute through the union against this arbitrary order of termination. The conciliation officer though tried for conciliation, the same failed and the appropriate government referred the matter for adjudication. In the claim petition the claimant has prayed for a direction to the management to reinstatement him into the service and grants the legal benefits.

The mgt no. 1 appeared and filed written statement denying his relationship with the claimant as its employer. It has been stated that the claimant was working through the contractor and getting the payment from the contractor. Any person appointed on temporary basis for a contractual work and not through a proper selection process cannot claim regularization and reinstatement.

The mgt no. 2 did not appear and was proceeded ex-parte. On the rivals pleading issues were framed by order dated 15.03.2018 in the following manner:

1. Whether the claim is not legally tenable in view of the various preliminary objections taken by the management?

2. In terms of reference.

When the matter was adjourned to workman evidence. The claimant workman filed an application on 15.11.2022 stating therein that w.p no. 12994 of 2021 and other connected writ petition are pending before the Hon'ble High Court of Delhi in which the dispute which is the subject matter of this dispute is to be decided as ordered by the High Court . Copy of the order dated 12.08.2021 and 17.11.2021 have been filed. In the petition has stated that the dispute being pending before the Hon'ble High Court does not want pursue the matter before this tribunal and thus wanted to withdraw . The mgt raised no objection. Hence, this award is being passed.

ORDER

The reference be and the same is answered against the claimant since he has no dispute raised against the mgt in this proceeding.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 25 मई, 2023

का.आ. 869.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मुख्य कार्यकारी अभियंता सीपीडब्ल्यूडी, प्रेममंडल-1 निर्माण भवन, नई दिल्ली; कार्यकारी अभियंता, सीपीडब्ल्यूडी, प्रेममंडल-1, इंद्रप्रस्थ भवन, नई दिल्ली, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री तरुण कुमार झा, कामगार,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट(संदर्भ संख्या 126/2021) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 24.05.2023 को प्राप्त हुआ था।

[सं. एल-42025-07-2023-99-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 25th May, 2023

S.O. 869.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 126/2021) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief Executive Engineer CPWD, Premandal-1 Nirman Bhawan New Delhi ;The Executive Engineer, CPWD,Premandal-1, Indraprastha Bhawan, New Delhi, and Shri Tarun Kumar Jha,Worker, which was received along with soft copy of the award by the Central Government on 24.05.2023.

[No. L- 42025-07-2023-99-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. PRANITA MOHANTY, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 126/2021

Date of Passing Award- 10th May, 2023

Between:

Shri Tarun Kumar Jha, S/o Late Sh. Sadanand Jha,
R/o K. N 182 Amrit vihar, Gali No. 05,
b-Block, Buradi, Delhi-110084.. ...Workman

Versus

1. The Chief Executive Engineer CPWD,
Premandal-1 Nirman Bhawan New Delhi-110001.
2. The Executive Engineer, CPWD,
Premandal-1, Indraprastha Bhawan, New Delhi-110002. …Managements

Appearances:-

Claimant in person.

None for the management.

AWARD

This is an application filed u/s 2A of the Id. Act by the claimant wherein he has alleged illegal termination with a prayer for reinstatement in service with full back wages and consequential benefits. Notice being served. When the matter was pending for appearance and written statement by the mgt , a proposal was advanced by the parties for amicable settlement and the matter was adjourned for settlement. On 1.12.2022, the claimant gave a statement to the effect that he has settled the dispute with the mgt and does not have any grievance against the mgt for which he wants to withdraw the proceeding.

Hence, this no dispute award is passed. Hence ordered .

ORDER

The claim be and the same is dismissed as the claimant has no dispute against the mgt and this no dispute award is accordingly passed.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 25 मई, 2023

का.आ. 870.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केंद्रीय माध्यमिक शिक्षा बोर्ड, शिक्षा केंद्र, 2- सामुदायिक केंद्र, प्रीत विहार, दिल्ली; प्रबंध निदेशक, मेसर्स न्यू ग्रोन सॉफ्टवेयर सॉल्यूशन (पी) लिमिटेड, मोती नगर, नई दिल्ली; प्रबंध निदेशक, मेसर्स नेहा एविएशन मैनेजमेंट प्रा. लिमिटेड ,महिपालपुर एक्सटेंशन, नई दिल्ली, के प्रबंधतंत्र के संबद्ध नियोजकों और श्रीमती चित्रा, कामगार,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ संख्या 03/2016 arising in ID. No. 23/2016) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 24.05.2023 को प्राप्त हुआ था।

[सं. एल-42025/07/2023-103-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 25th May, 2023

S.O. 870.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 03/2016 arising in ID. No. 23/2016) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to Central Board of Secondary Education, Sikha Kendra, 2- Community Centre, Preet Vihar, Delhi ;The Managing Director, M/s New Grown Software Solution (p) Ltd., Moti Nagar, New Delhi; The Managing Director, M/s Neha Aviation Management Pvt. Ltd.,Mahipalpur Extension, New Delhi, and Smt Chitra, Worker, which was received along with soft copy of the award by the Central Government on 24.05.2023.

[No. L- 42025/07/2023-103-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE Comp.no. 03/2016 arising in ID. No. 23/2016

Date of Passing Award- 8th May, 2023

Between:

Smt Chitra,
W/o Sh. Prakash Kanti,
C/o Sh. Balvir Saini,
R/o 31/114, Street No. 6,
Bhikam Singh Colony,
Vishwas Nagar, Shahdara,
Delhi-110032. ….Workman

Versus

1. Central Board of Secondary Education,
Sikha Kendra, 2- Community Centre, Preet Vihar,
Delhi.

2. M/s New Grown Software Solution (p) Ltd.
Through its Managing Director,
DLF Tower -341, Moti Nagar,
Third Floor, New Delhi.

3. M/s Neha Aviation Management Pvt. Ltd.
Through Its managing Director,
RZA-83 Road No. 4, Gali No.6,
Mahipalpur Extension, New Delhi …..Management

Appearances:-

Shri B.K Prasad, Ld .A/R for the claimant.
Shri M.A Niyazi, Ld. A/R for the management. (CBCE)

AWARD

This is an application filed by the complainant invoking the provision of section 33 A of the Id. Act for violation of the provisions of 33 of the ID. Act during the pendency of ID. No. 23/2016 .

The fact mentioned in the application is that the applicant had been employed by mgt no. 1 w.e.f 14.06.2012 as a computer assistant. Subsequently, on 19.1.2013 she appeared in the walk in interview conducted by the mgt no. 1 and was selected. Thereafter, she was appointed on a monthly wage of Rs.10000/- on contract basis for a period of 6 months. This appointment was renewed from time to time . The mgt no. 1 had barred the claimant from taking any employment outside during the tenure of the contract. She was assured by the mgt no. 1 that her service would be regularized . Suddenly the mgt engaged a contractor who is the mgt no. 2 of this proceeding and the service of the applicant was placed under the said contractor. That contractor was changed after May, 2015 and a new contractor i.e mgt no. 3 was brought in. Though, the contractors were changed, the claimant continued to serve the mgt uninterruptedly . But the claimant was insisting for regularization of her service. Her last drawn wage was 13000/- p.m when the mgt asked her to deposit Rs. 3000/- for their registration under the contractor. The claimant refused to do so. At that time she became pregnant and expecting to deliver a baby in September 2016. Having ESI no. she was visiting the ESI hospital and as per the advice of the doctor she remained on leave till 18.11.2016 . On 19.11.2016 though she was to join , that was a holiday being Saturday . On 21.11.2016 when she reported for duty, the mgt no. 1 did not allow. By marking her attendance in biometric system she left the office. At that time she was verbally informed about termination of her service. All the efforts made by her to convince the mgt for joining became futile. As there was a dispute pending for regularization of her service the order of termination was illegal and the claimant filed the present application invoking the provision of Section 33 of the ID. Act . In the claim a prayer has been made to declare the order of the termination as illegal and a direction for her reinstatement.

The mgt no. 1 appears and filed written statement denying employer employee relationship and maintainability of the proceeding.

The mgt no. 2 and 3 did not appear and proceeded ex-parte. On the rivals pleading issues were framed by order dated 15.03.2018 in the following manner:

1. Whether there is no relationship of employer and employee between the claimant and management no. 1 CBSE?
2. Whether termination of the claimant is against the provisions of the ID and against the principles of natural justice?
3. Relief.

When the matter was adjourned to workman evidence. The claimant workman filed an application on 15.11.2022 stating therein that w.p.c no. 12994 of 2021 and other connected writ petition are pending before the Hon'ble High Court of Delhi in which the dispute which is the subject matter of this dispute is to be decided as ordered by the High Court . Copy of the order dated 12.08.2021 and 17.11.2021 have been filed. In the petition has stated that the dispute being pending before the Hon'ble High Court does not want pursue the matter before this tribunal and thus wanted to withdraw . The mgt raised no objection. Hence, this award is being passed.

ORDER

The reference be and the same is answered against the claimant since he has no dispute raised against the mgt in this proceeding.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 25 मई, 2023

का.आ. 871.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महानिदेशक, गृह मंत्रालय, नॉर्थ ब्लॉक, नई दिल्ली; किरण एंटरप्राइजेज, प्लॉट नंबर 67-ए, शिव कॉलोनी, बी टोंक रोड सांगानेर, जयपुर, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री विपिन, कामगार , द्वारा - अध्यक्ष श्री हुकम चंद, सीपीडब्ल्यूडी, कर्मचारी संघ, गुड़गांव हरियाणा, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह-श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ संख्या 80/2020) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 24.05.2023 को प्राप्त हुआ था।

[सं. एल-42025-07-2023-94-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 25th May, 2023

S.O. 871.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 80/2020) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director General, Ministry of Home Affairs, North Block, New Delhi; Kiran Enterprises, Plot No. 67-A, Shiv Colony, B Tonk Road Sanganer, Jaipur, and Shri Vipin, Worker, Through- The President Shri Hukum Chand, CPWD, Karamchari Union, Gurgoan Harayana, which was received along with soft copy of the award by the Central Government on 24.05.2023.

[No. L- 42025-07-2023-94-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE No. 80/2020

Date of Passing Award- 10th May,2023

Between:

Shri Vipin
Through, The President Sh. Hukum Chand,
CPWD, Karamchari Union, Babu Lal Ji Complex,
Shop No. 04, Gurgoan Road, Opposite Bus Stand,
Gurgoan Harayana-122001. …Workman

Versus

1. The Director General, Ministry of Home Affairs,

   North Block, New Delhi-110001.

2. Kiran Enterprises,
   Plot No. 67-A, Shiv Colony,
   B Tonk Road Sanganer, Jaipur-302029. …Managements

Appearances:-

None for the Claimant
None for the Management

AWARD

This is an application u/s 2-A of the ID. Act, 1947 filed by the claimant against the management alleging illegal termination of his service.

Notice served on the claimant and the management.

The claimant filed the claim statement praying a direction to the management to reinstatement him with full back wages.

The management did not appear nor filed w/s and thus issues were not framed.

When the claimant was called upon to adduce evidence, he did not appear and the matter was reserved for passing no dispute award.

The stand taken in the claim petition is not proved and substantiated for want of oral and documentary evidence adduced by the claimant. Hence this no dispute award is passed.

ORDER

The claim be and the same is dismissed as not proved and accordingly answered against the claimant. This no dispute award is passed and forwarded to the parties.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The application u/s 2-A of the ID. Act, 1947 is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 25 मई, 2023

का.आ. 872.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महानिदेशक, गृह मंत्रालय, नॉर्थ ब्लॉक, नई दिल्ली; किरण एंटरप्राइजेज, प्लॉट नंबर 67-ए, शिव कॉलोनी, बी टोंक रोड सांगानेर, जयपुर, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री रमेश कुमार, कामगार , द्वारा - अध्यक्ष श्री हुकम चंद, सीपीडब्ल्यूडी, कर्मचारी संघ, गुड़गांव हरियाणा,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ संख्या 81/2020) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 24.05.2023 को प्राप्त हुआ था।

[सं. एल-42025-07-2023-93-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 25th May, 2023

S.O. 872.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 81/2020) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director General, Ministry of Home Affairs, North Block, New Delhi; Kiran Enterprises, Plot No. 67-A, Shiv Colony, B Tonk Road Sanganer, Jaipur, and Shri Ramesh Kumar, Worker, Through- The President Shri Hukum Chand, CPWD, Karamchari Union, Gurgoan Harayana, which was received along with soft copy of the award by the Central Government on 24.05.2023.

[No. L- 42025-07-2023-93-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. PRANITA MOHANTY, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 81/2020

Date of Passing Award- 10th May,2023

Between:

Shri Ramesh Kumar,
Through, The President Sh. Hukum Chand,
CPWD, Karamchari Union, Babu Lal Ji Complex,
Shop No. 04, Gurgoan Road, Opposite Bus Stand,
Gurgoan Harayana-122001. …Workman

Versus

1. The Director General, Ministry of Home Affairs,
North Block, New Delhi-110001.

2. Kiran Enterprises,
Plot No. 67-A, Shiv Colony,
B Tonk Road Sanganer, Jaipur-302029. ….Managements

Appearances:-

None for the Claimant

None for the Management

AWARD

This is an application u/s 2-A of the ID. Act, 1947 filed by the claimant against the management alleging illegal termination of his service.

Notice served on the claimant and the management.

The claimant filed the claim statement praying a direction to the management to reinstatement him with full back wages.

The management did not appear nor filed w/s and thus issues were not framed.

When the claimant was called upon to adduce evidence, he did not appear and the matter was reserved for passing no dispute award.

The stand taken in the claim petition is not proved and substantiated for want of oral and documentary evidence adduced by the claimant. Hence this no dispute award is passed.

ORDER

The claim be and the same is dismissed as not proved and accordingly answered against the claimant. This no dispute award is passed and forwarded to the parties.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The application u/s 2-A of the ID. Act, 1947 is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 25 मई, 2023

का.आ. 873.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महानिदेशक, गृह मंत्रालय, नॉर्थ ब्लॉक, नई दिल्ली; किरण एंटरप्राइजेज, प्लॉट नंबर 67-ए, शिव कॉलोनी, बी टोंक रोड सांगानेर, जयपुर, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री राजेश कुमार, कामगार , द्वारा - अध्यक्ष श्री हुकम चंद, सीपीडब्ल्यूडी, कर्मचारी संघ, गुड़गांव हरियाणा,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण-सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ संख्या 82/2020) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 24.05.2023 को प्राप्त हुआ था।

[सं. एल-42025-07-2023-95-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 25th May, 2023

S.O. 873.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 82/2020) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director General, Ministry of Home Affairs, North Block, New Delhi; Kiran Enterprises, Plot No. 67-A, Shiv Colony, B Tonk Road Sanganer, Jaipur, and Shri Rajesh Kumar, Worker, Through- The President Shri Hukum Chand, CPWD, Karamchari Union, Gurgoan Harayana, which was received along with soft copy of the award by the Central Government on 24.05.2023.

[No. L-42025-07-2023-95 -IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 82/2020

Date of Passing Award- 10th May, 2023

Between:

Shri Rajesh Kumar
Through, The President Sh. Hukum Chand,
CPWD, Karamchari Union, Babu Lal Ji Complex,
Shop No. 04, Gurgoan Road, Opposite Bus Stand,
Gurgoan Harayana-122001. ….Workman

Versus

1. The Director General, Ministry of Home Affairs,
North Block, New Delhi-110001.

2. Kiran Enterprises,
Plot No. 67-A, Shiv Colony,
B Tonk Road Sanganer, Jaipur-302029. …Managements

Appearances:-

None for the Claimant
None for the Management

AWARD

This is an application u/s 2-A of the ID. Act, 1947 filed by the claimant against the management alleging illegal termination of his service.

Notice served on the claimant and the management.

The claimant filed the claim statement praying a direction to the management to reinstatement him with full back wages.

The management did not appear nor filed w/s and thus issues were not framed.

When the claimant was called upon to adduce evidence, he did not appear and the matter was reserved for passing no dispute award.

The stand taken in the claim petition is not proved and substantiated for want of oral and documentary evidence adduced by the claimant. Hence this no dispute award is passed.

ORDER

The claim be and the same is dismissed as not proved and accordingly answered against the claimant. This no dispute award is passed and forwarded to the parties.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The application u/s 2-A of the ID. Act, 1947 is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 25 मई, 2023

का.आ. 874.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार विधि और न्याय मंत्रालय, न्याय विभाग, सर्वोच्च न्यायालय विधिक सेवा समिति, द्वारा -सचिव, उच्चतम न्यायालय परिसर, नई दिल्ली; निदेशक, मिराज सुविधाएं प्रबंधन सेवाएं प्रा. लिमिटेड भाकाजी कामा प्लेस, नई दिल्ली, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री हरेंद्र ठाकरान, कामगार,अरविंद कुमार लीगल एयर काउंसिल, संत नगर दिल्ली,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ संख्या 280/2022) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 24.05.2023 को प्राप्त हुआ था।

[सं. एल-42025-07-2023-97-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 25th May, 2023

S.O. 874.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 280/2022) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to Ministry of Law and Justice , Department of Justice, Supreme Court Legal Services Committee, Through -Secretary, Supreme Court Compound, New Delhi ; The Director, Miraz Facilities Management Services Pvt. Ltd. Bhakaji Cama Place, New Delhi, and Shri Harender Thakran Worker, Through – Shri Arvind Kumar, Legal Air Counsel, Sant Nagar Delhi which was received along with soft copy of the award by the Central Government on 24.05.2023.

[No. L- 42025-07-2023-97-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. PRANITA MOHANTY, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 280/2022

Date of Passing Award- 10th May, 2023

Between:

Shri Harender Thakran S/o Sh. Bijender Thakran,
R/o 275 , Nangal Thakran, Delhi-110039.

Through Arvind Kumar Legal Air Counsel,
Office-DSKA legal LLP, 34 LGF Pragati Enclave,
Sant Nagar Delhi-110084. …Workman

Versus

1. Ministry of Law and Justice , Department of Justice,
Supreme Court Legal Services Committee,
Through Its Secretary,
Supreme Court Compound, New Delhi-110001.

2. The Director,
Miraz Facilities Management Services Pvt. Ltd.
38, Mohammad Pur, Bhakaji Cama Place, New Delhi-110066 .

Managements

Appearances:-

Claimant in person.
None for the management. .

AWARD

This is an application filed u/s 2A of the Id. Act by the claimant wherein he has alleged illegal termination with a prayer for reinstatement in service with full back wages and consequential benefits. Notice being served on management no.1 and 2. When the matter was pending for filing of written statement by the managements, a proposal was advanced by the parties for amicable settlement. The matter was adjourned to 11.02.2023 for settlement during the National Lok Adalat. Prior to that date on 5th December , 2022 the claimant gave a statement to the effect that he has settled the dispute with the mgt and does not have any grievance against the mgt for which he wants to withdraw the proceeding. In view of the said statement the matter was decided during the National Lok Adalat held on 11.02.2023 and this no dispute award has been passed. Hence, ordered.

ORDER

The claim petition is dismissed for want of dispute raised by the claimant and this award is accordingly passed.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 25 मई, 2023

का.आ. 875.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, भारतीय राष्ट्रीय साइकिल निगम, हिंद नगर, गाजियाद (उ.प्र.); प्रबंध निदेशक, भारतीय राष्ट्रीय साइकिल निगम, 250, वर्ली, मुंबई, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री सुखपाल सिंह, कामगार,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ संख्या 78/2012) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 24.05.2023 को प्राप्त हुआ था।

[सं. एल-42011/162/2011-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 25th May, 2023

S.O. 875.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 78/2012) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, National Bicycle Corporation of India, Hind Nagar, Ghaziaad (U.P); The Managing Director, National Bicycle Corporation of India, 250, Worli, Mumbai, and Shri Sukhpal Singh, Worker, which was received along with soft copy of the award by the Central Government on 24.05.2023.

[No. L-42011/162/2011 -IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. PRANITA MOHANTY, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi

INDUSTRIAL DISPUTE CASE NO. 78/2012

Date of Passing Award- 8th May, 2023

Between:

Sh. Sukhpal Singh,
S/o. Sh. Avtar Singh,
R/o: Village-Sadarpur,
PO: Khas, Ghaziabad, (UP) …. Workman

Versus

1. The General Manager,
   National Bicycle Corporation of India,
   Hind Nagar,
   Ghaziaad (UP)

2. The Managing Director,
   National Bicycle Corporation of India,
   250, Worli,
   Mumbai …Managements

Appearances:-

Shri Narender Singh , Ld .A/R for the claimant.
Shri Praveen Sharma, Ld. A/R for the management.

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of (i) The General Manager, National Bicycle Corporation of India, (ii) The Managing Director, National Bicycle Corporation of India, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-42011/162/2011 (IR(DU)) dated 15.02.2012 to this tribunal for adjudication to the following effect.

"Whether the action of the management of National Bycycle Corporation of India, Ghaziabad in terminating the services of Shri Sukhpal Singh S/o Shri Avtar Singh without complying with Section 25 F,O, of the ID Act, is legal and justified? What relief the workman is entitled to?"

As disclosed in the claim statement the claimant Sukhpal Singh was in the employment of the mgt M/s National Bicycle Corporation of India Ltd. Ghaziabad U.P. since July 1979 in the post of Power Press Operator. His last drawn salary was Rs. 800/- per month. Though he was working honestly and sincerely, the mgt was not extending the legal benefits to him. On 22.05.1989 he was arrested and forwarded to the Jail in Meerut on some false allegations and in connection with a criminal case. He was detained in jail till 04.06.1990. He being unable to join duty, inform the mgt about the same in writing through his co-workers Chander Pal Singh, requesting to grant him the leave for the period of his detention in Jail. On 04.06.1990 he was released from jail and on the next day that is on 05.06.1990 he went to the factory of the mgt to resume duty. But he was not allowed to perform duty and was asked to file an affidavit stating about his detention in jail. The workman complied the direction by filing the affidavit on 02.07.1990. On that day, the mgt verbally informed him that his service has been terminated and his name has been struck off from the muster rule with effect from 11.09.1989. But no order of termination was served on him. Before termination of his service, no notice pay or termination compensation was paid, not only that a domestic enquiry was also conducted against him before termination. Having no other alternate employment he kept on visiting the office of the mgt hoping that he would be reinstated into service. When all his efforts failed, he served demand notices on the mgt on 29.06.1989, 23.10.1990 and 21.01.1991. But none of his notices were replied by the mgt. The claimant then raised a dispute before the Assistant Labour Commissioner Ghaziabad and for failure of conciliation the dispute was referred to the Labour Court Ghaziabad and registered as ID no 171/1992. Before the said Labour Court the mgt filed application challenging the jurisdiction and accordingly the Labor Court Ghaziabad passed an order closing further proceeding of the matter. Left with no other option, the workman raised a dispute before the Assistant Labour Commissioner (Central Dehradun) and steps were taken for conciliation. But for the non cooperation of the mgt the conciliation failed and the appropriate Govt. referred the matter to this tribunal. Describing the order of termination as illegal and contrary to the provisions of ID Act, the claimant has made a prayer that an award may be passed directing the mgt to pay full arrear back wages, and compensation including other benefits to which he is entitled.

Being noticed the mgt appeared and filed written statement challenging the maintainability of the proceeding as barred by limitation. It has been stated that there is delay of 20 years and the claimant has not given out or explained the sufficient legal cause for the same. It has been stated that the National Bicycle Corporation was referred to BIFR u/s 15 of the Act as a sick industrial company and an order was passed proposing winding up of the company and recommendation to that effect was sent to the Hon'ble High Court of Bombay. Furthermore, as per the permission granted by Govt. of India Ministry of Labour, this company was finally closed with effect from 21.07.2001. Hence, no liability of any nature can be levied against a closed company. So far as the claim of the claimant is concerned, it has been stated that he was a habitually irregular person and on many occasions, found involved in the acts of misconduct. Many warnings were issued to him asking him to mend his behavior. From 20.05.1989 the claimant remained unauthorizedly absent from duty. Notices by registered post with A.D were sent to him on 05.06.1989 and 20.07.1989. But he managed to evade the service. Thus on 20.07.1989 a show cause notice was issued to him. But the claimant did not submit any explanation and thus his service was terminated by order dated 11.09.1989. Thus the action of the mgt cannot be found with fault. Moreover, as per the entry in his service record the claimant had attained the age of

superannuation on 18 .02.2010. Hence, no order of reinstatement or compensation with back wages can also be passed.

The claimant field rejoinder denying the stand taken by the mgt. It has been stated that delay in this proceeding was not intentional but for the wrong forum chosen by him due to mistake. He has further stated that when the reference was made the claimant had not attained the age of superannuation.

On theses rival pleadings the following issue are framed.

1. Whether delay of 2 years in raising the dispute frustrates his relief?
2. Whether closure of business activities of the mgt with effect from 21.07.2001 comes in the way of the claimant for seeking relief?
3. Whether order dated 11.09.1989 amounts to retrenchment?
4. As in terms of reference.

The claimant examined himself as ww1 and filed a number of documents as exhibit ww1/1 to ww1/12. He also examined his coworkers Chander pal as WW2. The documents filed by the claimants include the photocopy of the demand notices sent to the mgt, the order passed by the Labour Court Ghaziabad photocopies of the attendance register the representations made by him to the mgt and the written application dated 15.05.1989 submitted by him praying for grant of leave with effect from 13.05.1989. On behalf of the mgt one of it's ex-employee testified as mw1 who proved the documents marked in a series of mw1/1 to mw1/7. These documents include the correspondence made by the company with the claimant calling him to explain the misconducts committed by him and the photocopy of the police report dated 14.04.1985, photo copy of the latter written to the Superintendent of Police and several show cause noticed issues to the claimant in the year 1980. Both the witness were cross examined at length by their adversaries.

Findings

Issue No. 1

The mgt has raised serious objection with regard to the delay in raising the dispute. Relying upon various pronouncements the ld. A/R for the mgt submitted that delay in initiation of proceeding causes prejudice to the mgt, since the later misses the opportunities of producing the documents in proof of its stand. But in this case the objection raised by the mgt does not sound convincing since the claimant has properly explained the delay in raising the dispute. From the oral and documentary evidence adduced by the claimant including the order of the Labour Court Ghaziabad it clearly appears that the stand of the mgt with regard to the delay is not acceptable as it was for a situation beyond the control of the claimant. This issue is accordingly answered in favour of claimant and it is held that the delay in filing of the dispute shall not affect the reliefs sought for.

Issue no. 2,3 4

These issues being interconnected are taken up for consideration together. The claimant has stated that he was appointed in the mgt in July 1979 and continued to work as such till his service was illegally terminated on 11.09.1989. It has been stated that has last drawn salary was Rs. 800 per month. Though the mgt while filing the W.s has stated that the claimant was not appointed in 1979 as claimed by him, no evidence to that effect has been filed. The mgt witness mw1 has admitted during cross examination that the claimant was a regular employee of the mgt. The mgt has not disputed the last drawn salary as stated by the claimant. Now, it is to be seen if the claimant's service was illegally terminated or not. The claimant has stated that on 22.05.1989 he was arrested and remanded to jail in connection with a criminal case falsely registered against him. Due to such detention, he could not report for duty and through a co-worker Chander Pal ww2, sent intimation to the mgt. Chanderpal examined as ww2 has corroborated the statement of the claimant in this regard. The said ww2 has further added that the wife of the claimant obtained the signed leave application of the claimant from Jail and handed over to him. He then produced the same in the office of the mgt which was accepted. The representation of the claimant after release from the jail has been filed by the mgt which reveals that the claimant had intimated this fact of absences to the mgt. The workman has further stated that after his release from jail on 04.06.1990, he reported for duty on 05.06.1990. But mgt did not allow him. On the contrary, asked him to file an affidavit which was complied. The witness examined on behalf of the mgt has stated that for the unauthorized absence the mgt had issued show cause notice to the claimant by registered post with A.D. But the same were not received and returned unserved. During cross examination of the claimant it came out that the residential address of the claimant available with the mgt was never changed. This leads to a conclusion that the mgt having knowledge about the detention of the claimant in Jail custody went on issuing show cause notices and for non receipt of reply, terminated his service with effect from 11.09.1989 when the claimant was in jail custody.

Evidence on record clearly establishes that the mgt, in a haste, took action against the claimant when he was in jail custody by termination his service. Before doing so no domestic inquiry for unauthorized absent was held nor the provisions of 25 F of the ID Act were complied. The said action of the mgt amounts to unfair labour practice.

The admitted position is that the national bicycle company has been completely closed and the claimant has attained the age of superannuation. In such a situation, it is not felt proper and legal to issue a direction to the mgt for his reinstatement. But for the unfair legal practice meted to the claimant, who is litigating since 32 years to get justice, he deserved to be compensated for the loss sustained by him along with 50% of the back wages based on the principle that during this period he has not discharged any kind of duty. These issues are accordingly answered in favour of the claimant. Hence ordered.

ORDER

The reference be and the same is answered in favour of the claimant it is held that the service of the claimant was illegally terminated by the mgt in gross violation of the provisions of ID Act. The claimant since has attained the age of superannuation it is directed that the mgt shall grant 50 % of the back wage in accordance to his last drawn salary for the period from 11.09.1989 till 18.02.2010, when he attained the age of superannuation. This amount shall be paid without interest along with 1 Lakh towards litigation expanses within 2 months from the date of publication of the award failing the amount so accrued shall carry interest at the rate of 6% per annum form the date of accrual and till the final payment is made.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 25 मई, 2023

का.आ. 876.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार लेडी हार्डिंग मेडिकल कॉलेज, कनॉट प्लेस, नई दिल्ली; एम/एस आकाश फायर इंजीनियर्स, मयूर विहार, फेज -01, नई दिल्ली, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री विनोद, कामगार, द्वारा - प्रोग्रेसिव नेशनल लेबर यूनियन, शाहदरा, दिल्ली,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ संख्या 153/2018) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 24.05.2023 को प्राप्त हुआ था।

[सं. एल-42025/07/2023-100-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 25th May, 2023

S.O. 876.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 153/2018) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to Lady Harding Medical College , Connaught Place, New Delhi ; M/s Akash Fire Engineers, Mayur Vihar, Phase-01, New Delhi, and Shri Vinod, Worker, Through- Progressive National Labour Union, Shahdara, Delhi, which was received along with soft copy of the award by the Central Government on 24.05.2023.

[No. L-42025/07/2023-100 -IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 153/2018

Date of Passing Award- 10th May, 2023

Between:

Shri Vinod, S/o Sh Ram Chander,
Through, Progressive National Labour Union,
205, Pratap Khand, Vishwakarma Nagar, Shahdara,
Delhi-110095. …Workman

Versus

1. Lady Harding Medical College
604 , Shaheed Bhagat Singh, Marg, Connaught Place,
New Delhi-110002.

2. M/s Akash Fire Engineers,
Address-412, Village Chilla, Mayur Vihar,
Phase -01, New Delhi-110037.

Managements

Appearances:-

Claimant in person.

Lady Harding Medical College i.e mgt no. 1 has already been ex-parte.

Ms. Komalpreet Ld. Proxy A/R for the management.

AWARD

This is an application filed u/s 2A of the Id. Act by the claimant wherein he has alleged illegal termination with a prayer for reinstatement in service with full back wages and consequential benefits. Notice being served, the mgt appeared through it's A/R and on completion of pleadings issues were framed by order dated 05.07.2019. When the matter was pending for evidence to be adduced by the claimant, a proposal was advanced by the parties for amicable settlement. The matter was adjourned to 11.02.2023 for settlement during the National Lok Adalat. Prior to that date on 02.01.2023 the claimant gave a statement to the effect that he has settled the dispute with the mgt and does not have any grievance against the mgt for which he wants to withdraw the proceeding. In view of the said statement the matter was decided during the National Lok Adalat held on 11.02.2023 and this no dispute award has been passed. Hence, ordered.

ORDER

The claim petition is dismissed for want of dispute raised by the claimant and this award is accordingly passed.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 25 मई, 2023

का.आ. 877.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध मनिर्दिष्ट औघोगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (5/2022) प्रकाशित करती है।

[सं. एल-12012/103/2005 -आईआर(बी-II)]

सलोनी, उप निदेशक

New Delhi, the 25th May, 2023

S.O. 877.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 5/2022) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Chennai as shown in the Annexure, in the industrial dispute between the management of Indian Bank and their workmen.

[No. L- 12012/103/2005-IR (B-II)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CGIT-CUM-LABOUR COURT & EPF APPELLATE TRIBUNAL CHENNAI

ID No. 5/2022

Present: DIPTI MOHAPATRA, LL.M. Presiding Officer

Date: 01.12.2022

Sri T. Subramaniyam
S/o Sri Thangavel
Sithazhi Village
Kunnam Taluk
Perambalur District
Tamil Nadu : 1st Party/Petitioner

AND

The Assistant General Manager
Indian Bank, Circle Office
Jennie Plaza, 5-F, Bharathiyar Salai
Cantonment
Trichy-1 : 2nd Party/Respondent

Appearance:

For the 1st Party/Petitioner : Advocate, Sri V. Ajoy Khose
For the 2nd Party/Respondent : Advocate, M/s Aiyar & Dolia

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12012/ 103/2005-IR(B.II) (Part File) dtd. 28.01.2022 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

> **"Whether the dispute raised on 02.03.2005 by T. Subramaniyam S/o Thangavel, Ex-Jewel Appraiser engaged in Indian Bank, Keelapuliyur Perambalur District, over oral termination of his service w.e.f. 30.11.2004 by the Management of Indian Bank, Keelapuliyur, Kunnam Taluk, Perambalur District, Tamilnadu is justified and legal? If yes, to what relief the concerned workman is entitled to?"**

2. On receipt of the above reference from the appropriate Government, the dispute on reference is registered as ID No. 5/2022 and notices were issued to both the parties for their appearance fixing the case to 25.04.2022. Petitioner appeared along with the Counsel who filed Vakalat. Later the Respondent Counsel is also present and file Vakalatnama. The case was listed to 13.06.2022 directing the Petitioner to file Claim Statement and documents. The case was again re-listed to 27.07.2022 and the parties were directed to appear. As such, it is simply dragged till 18.10.2022 intervening three adjournments, for the same purpose. The Petitioner nor the Counsel / Authorized Representative appeared on any of those days. It appears even if for the interest of justice the Tribunal suo-moto afforded sufficient opportunities to the Petitioner, there was no progress in the proceeding due to the non-cooperation of the Petitioner. The non-appearance and non-participation in the proceeding by the Petitioner constrained the Tribunal not to repost the proceeding to any other date for the same

purpose as much as it deems the petitioner has no interest to proceed with the case. Thus, the case is liable for dismissal in accordance to Law.

In view of the discussion held in preceding paragraph, it deems there exists no dispute for adjudication as referred by the Appropriate Government.

In the result the reference is answered against the Petitioner.

The ID case stands dismissed.

An Award is passed accordingly.

DIPTI MOHAPATRA, Presiding Officer

नई दिल्ली, 25 मई, 2023

का.आ. 878.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कोल इंडिया लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 33/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.05.2023 को प्राप्त हुआ था।

[सं. एल-22012/231/2004-आईआर(सी.एम-II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 25th May, 2023

S.O. 878.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/2005*)* of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the Management Coal India Limited and their workmen, received by the Central Government on 24*/05/2023*

[No. L-22012/231/2004 – IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. Bhutia, Presiding Officer

REF. NO. 33 OF 2005

Parties: Employers in relation to the management of

Coal India Limited, Northern Coalfields Limited

AND

Their Workmen

Appearance :

On behalf of Management : Mr. Buddhadeb Ghosh, Ld. Counsel/ Advocate.

On behalf of the Workmen : None

Dated 23rd March, 2023

AWARD

Today too Union is found absent, when the matter is called. None appears on behalf of the Union. In fact from the Order dated 27.10.2022, it appears the notice of appearance sent to the Union, after I took charge of this Tribunal on 19.08.2022 has returned undelivered with postal endorsement "Refused to accept" and which tantamount to good service.

Such attitude and conduct of the Union reflect that it is not interested to acknowledge the dispute espoused by it and on the basis of its complaint, the Govt. of India through Ministry of Labour had referred the following issues for adjudication by this Tribunal vide Order No. L-22012/231/2004 – IR (CM-II) dated 29.06.2005.

> **"Whether the action of the management by not converting Shri Subal Chandra Das, Driver Posted at Northern Coalfields Limited, Kolkata from daily rated to the monthly rated driver/workman in the line of Shri Ganesh Chandra Das, Driver of the same organization is legal and justified? If not, to what relief the workman is entitled?"**

On the other hand, the Management of Coal India Limited is represented by its newly appointed lawyer Mr. Buddhadeb Ghosh and who files fresh Vakalatnama. Let it be taken on record.

Record shows, the concerned workman Shri Subal Chandra Das has filed his evidence in chief on Affidavit on 04.08.2008 and neither the Union nor their lawyer bothered to tender his such evidence on affidavit.

Therefore, there is nothing on record to substantiate or corroborate the claim of the Union or workman that inspite of rendering service as a daily rated driver to the establishment since June, 1992, he has not been given benefits of a monthly rated driver. Whereas, the Management had given such benefits to one Ganesh Chandra Das, a daily rated driver on 01.12.1987 and had also regularize the service of Gopal Sen Gupta, a general Mazdoor as a peon on 21.12.2001. The Management has adopted unfair labour practice by regularizing the service of certain employees in arbitrator manner.

The present reference is of the Year 2005 and today is 2023, in the last 18 years the concerned workman might have received the benefit of regularization and as such, neither he nor the Union which has espoused the dispute is interested to pursue with the present dispute.

In view of the above, there is no dispute to adjudicate. Accordingly, the present Reference Case No. 33 of 2005 is disposed of "No Dispute Award" is passed.

Send copy of this Award/Order to the Ministry for doing needful.

Justice K.D. Bhutia, Presiding Officer

नई दिल्ली, 25 मई, 2023

का.आ. 879.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कोल इंडिया लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 15/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.05.2023 को प्राप्त हुआ था।

[सं. एल-22012/357/2007-आईआर(सी.एम-II)]

मणिकंदन. एन, उप निदेशक

New Delhi, the 25th May, 2023

S.O. 879.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 15/2008*)* of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the Management Coal India Limited and their workmen, received by the Central Government on 24*/05/2023*

[No. L- 22012/357/2007 -IR (CM-II)]

MANIKANDAN. N, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Present: Justice K. D. BHUTIA, Presiding Officer

REF. NO.15 OF 2008

Parties: Employers in relation to the management of **Coal India Ltd.**

AND
Their Workmen

Appearance :

On behalf of Management : None
On behalf of the Workmen : None

Dated 16th January, 2023

AWARD

None appears on behalf of the Management, Coal India Ltd. inspite of due service of notice of appearance as per A.D. Card.

Similarly, Authorize Representative of all those Unions namely Coal Mines Authority Ltd. Employees Union, Rashtriya Coal Mazdoor Sangh, Coal Employees Union and National Coal Organization Employees' Association fail to appear inspite of service of notice upon some of them. There is no alternative address of party no. five and six to send notice of appearance through notice of appearance was duly served upon Union/ party No. 4, and Union / party No. 3 has refused to accept the same. The record shows on 07.11.2019 the Unions have abandoned to pursue the case which is already fixed for hearing argument.

Keeping in view the above facts, this Tribunal decide to proceed with the present reference case in view of Rule 22 of I.D. Act 1957 as if both side are present.

The Govt. of India, Ministry of Labour in exercise of the powers conferred by Section 10(1) (d) & 2(A) of the Industrial Dispute Act, 1947 has referred the following issues for adjudication vide its Office Order No. L-22012/357/2007-IR (CM-II) dated 01.07.2008.

(i) Whether the demand of the Unions for arrears of HRA i.e. 30% of revised basic pay as per National Coal Wages Agreement – VII (NCWA-VII) w.e.f 01.07.2001 is legal and justified?

(ii) Whether the action of the management of M/s Coal India Limited in deducting the arrears of HRA already paid to the employees concerned from their last instalment of wage arrears is legal and justified?

(iii) To what reliefs are the employees concerned entitled for?

The facts of the case leading to this reference as gathered from the material on record i.e. pleadings of the parties, the evidence of witnesses is that as per direction of the Govt. of India the Employer Coal India Ltd. with five Central Trade Unions formed a Joint Bipartite Committee to settle National Coal Wages Agreement – VII (NCWA-VII) for the Workmen of Coal Industries on 17.12.2003. The representative of the Management and Representative of these Central Trade Unions executed a memorandum of agreement on 15.07.2005.

The agreement provides the wage revision and other fringe benefits including House Rent Allowance. The period of agreement was from 01.07.2001 to 30.06.2006. It was agreed the HRA for employees in Urban area will be followed as provided in the previous agreement and other related issues will be discussed in the standardization Committee within three month.

Accordingly, Standardization Committee of J.D.C.C. held a meeting on 06.09.2005 and where ceiling limit of H.R.A. of non-executive employees in Urban Area was revised w.e.f 01.07.2004 with maximum limit of H.R.A. is different reclassified city / town as follows:

(1) A-1 Class cities = 30% of Revised Basic Pay subject to maximum of Rs.4572.60 P.

(2) A Class cities = 25% of Revised Basic Pay subject to maximum of Rs. 3810.50 P.

(3) B-1 Class cities = 20% of Revised Basic Pay subject to maximum of Rs.3048.40 P .

(4) B Class cities = 15% of Revised Basic Pay subject to maximum of Rs. 2286.30 P.

(5) C Class cities = 10% of Revised Basic Pay subject to maximum of Rs. 1524.20 P.

However, previous ceiling limit as agreed in National Coal Wages Agreement –VI (N.C.W.A-VI) remained in force till 30.06.2004.

It has been alleged by the Unions since (N.C.W.A-VII) was signed on 15.07.2005 and workmen were entitled to arrears on revision of their pay from 01.07.2001 to 30.06.2004.

As per agreement, the workers were entitled to draw 50% of arrears as per N.C.W.A–VII before May, 2006 and balance in two instalments of 25% each.

Accordingly, arrear was calculated taking into consideration H.R.A. on the Revised Basic Pay subject to the maximum ceiling of Rs.2820/- from 01.07.2001 to 30.06.2004 as per ceiling fixed under N.C.W.A –VI and from 01.07.2004 onwards subject to the maximum ceiling of Rs.4572.60 Paisa.

Unions have also alleged the employees of Urban Area was paid arrear calculated on the above formula, but at the time of payment of third and final instalment in the month of March, 2007, the Management arbitrarily and unilaterally deducted a portion of H.R.A. already paid to the employees in the earlier two instalments on the ground of overpayment and alleged it is in violation of N.C.W.A–VII Clause 8:1:3 with II No. 10 dated 23.09.2005.

The Management could not recover such excess paid to thousands of workers who retired in the meantime after taking the benefits.

They have also alleged that N.C.W.A-VI was replaced by N.C.W.A-VII w.e.f 01.07.2001 in view of the N.C.W.A-VII was signed on 15.07.2005. Accordingly, the workmen are entitled to get the arrears on wages, H.R.A w.e.f 01.07.2001 to 30.06.2004. Therefore, computation of arrear on H.R.A taking maximum ceiling limit of Rs.2820/- from 01.07.2001 to 30.06.2004 was proper and correct as ceiling fixed in N.C.W.A-VI will continue till it replaced by N.C.W.A-VII.

Thus, Union has prayed for payment of H.R.A @ 30% of Revised Basic Pay as per ceiling of Rs.2820/- as contained in N.C.W.A-VI from 01.07.2001 to 30.06.2004 and refund of H.R.A deducted from the third instalment of arrear. On the other hand, the Management, in its written statement as alleged that there was a meeting of Joint Bipartite Committee for the Coal Industry on 02.12.2004 and where decision was taken for revision of H.R.A and other allowances w.e.f 01.07.2004.

In such meeting the existing H.R.A of Rs.75/- p.m. was revised to Rs.100/- p.m. w.e.f 01.07.2004 in respect of those employees who have not been provided quarters of the company in the Coal Field Area.

Similarly, H.R.A for Urban area was also revised w.e.f 01.07.2004 as per discussion held on 06.09.2005 in the Standardization Committee of J.B.C.C.I-VII.

Payment of H.R.A up to ceiling of Rs.2820/- was applicable with reference to pre-revised pay up to 30.06.2004 and not with reference to Revised Pay w.e.f 01.07.2001.

H.R.A for the period from 01.07.1996 to 31.06.1999 was made on the basis of N.C.W.A-V. The Revised Wages of N.C.W.A-VI was made effective for payment of H.R.A was only from 01.07.1999.

That while payment of arrears in 1st and 2nd instalment wrongly arrears on H.R.A was calculated taking ceiling of Rs.2820/- w.e.f 01.07.2001 to 30.06.2004. That as per agreement arrear of H.R.A Revised Basic Wages was payable w.e.f 01.07.2004 only and not from 01.07.2001 to 30.06.2004. Consequently, such excess payment made on wrong calculation for the period from 01.07.2001 to 30.06.2004 was adjusted and recovered from the payment of 3rd arrear instalment.

Therefore, it has prayed for dismissal of the present reference.

The Unions to prove their claim and case have examined Mr. Sandip Kumar Bhowmik, General Secretary, Coal Mine Authority Ltd. as W.W No. 1.

Dilip Kumar Majumder, President of Rastriya Coal Mazdoor Sangh as W.W No. 2.

While management has examined Sri R. Gobinda Warriar, Ex Deputy Chief Personnel Manager of Coal India Ltd. as M.W 1.

Manoj Kumar, a Senior Manager as M.W No. 2 and another Senior Manager Sri Rajarshi Dhar as M.W No.3.

Unions have produced as many as 14 documents and Management has produced 5 documents and which have been marked as exhibit.

It is admitted facts that service conditions of Non-Executive Employees of Coal India Limited are decided through various agreements which are popularly known as "National Coal Wages Agreement". The agreements are entered in between Management and Joint Body of Management and Unions by formation of a body called as "Joint Bipartite Committee for the Coal Industry (JBCCI)".

The present reference case is concerned with N.C.W.A –VII which was finalised by J.B.C.C.I on 15.07.2005 particularly in respect of H.R.A.

Matter relating to House Rent Allowance is dealt in Chapter VIII of such N.C.W.A-VII and which provides that "existing H.R.A of Rs.75/- per month will be increased to Rs.100 p.m. w.e.f **01.07.2004**and will be paid to those employees who have not been provided with residential accommodation".

It has further provided for payment of H.R.A to those workmen who are in occupation of quarter provided by the company, but subject to type of quarters, nature and manner of their possession or occupancy and extent of their occupation in those company's quarter.

However, H.R.A for employees in Urban Area was not decided and left it for further deliberation in the Standardization Committee within a period of 3 months and till final decision, the employees in Urban Area was provided to draw the H.R Allowance as per previous agreements.

Ext. M-1, shows that in pursuance of Memorandum of agreement dated 15.07.2005, Standardization Committee on different service matter of employees of Coal India was held on 06.09.2005.

In such meeting for employees in Urban Area was settled that they would be entitled to draw the H.R.A on Revised Rate w.e.f. 01.07.2004 like Workmen working in Coal Field Areas are paid H.R.A under N.C.W.A-VII w.e.f. 01.07.2004 and not from 01.07.2001 as demanded by the Unions.

Further, maximum limit of H.R.A for Urban Area employees have been fixed on the basis of Class of Cities.

From Issue No. 1 of Reference Order, it appears that Unions have demanded 30% of Revised Basic Pay as H.R.A for all Urban Areas employees of Coal India irrespective of the different class of cities.

Such demand for uniform rate of H.R.A for all Urban Areas employees of Coal India, posted in different classes of cities appear in proper and unjust.

Ext. 5 N.C.W.A-VI dated 14.06.2001 too shows that employees getting H.R.A in Urban Area were paid at different rates as per classification of the cities by the Govt.

Ext. M-1 and Ext. W-4 show that it was agreed between the Managements & Unions H.R.A to Non-Executive Employees working in different Urban Areas was fixed at the rates as per classification of cities and towns. Like N.C.W.A–VI in N.C.W.A-VII too.

(1) For Class A-1 Cities rate of H.R.A was fixed @ 30% of Revised Basic pay, but this time subject to maximum limits of Rs.4572.60 Paisa.

(2) For Class A Cities H.R.A was fixed @ 25% of R.B.P subject to maximum limits of Rs.3810.50 Paisa.

(3) For Class B-1 Cities H.R.A was fixed @ 20% of R.B.P subject to maximum limits of Rs.3048.40 Paisa.

(4) For Class B Cities H.R.A was fixed @ 15% of R.B.P subject to maximum limits of Rs.2286.30 Paisa.

(5) For Class C Cities H.R.A was fixed @ 10% of R.B.P subject to maximum limits of Rs.1524.20 Paisa.

Therefore, from N.C.W.A –VI and it is seen that Standardization Committee formed under N.C.W.A-VII for H.R.A and other service matter the same pattern was adopted which was followed earlier, but only changes that was brought in the maximum limit.

Therefore, this Tribunal of view for purpose of payment of H.R.A to employees in Urban Areas Govt. classification is followed and same rate was adopted which was followed or adopted in N.C.W.A –VI. Thus, demand of the Union for uniform payment of H.R.A @ 30% for all Urban Areas employee irrespective of different classification of cities appear to be unjust and not proper.

As per Chapter XIII Clause 13:1:1 of N.C.W.A-VII of the agreement including the wage structure shall come into force and will be implemented w.e.f 01.07.2001, unless otherwise specified.

Therefore, the Tribunal is of view the all financial benefits enumerated in N.C.W.A-VII on Revision of Pay should be effective from the date of its implementation i.e 01.07.2001.

Surprisingly, separate date has been fixed for implementation of H.R.A i.e. 01.07.2004. Therefore, selection of different date for payment of H.R.A to all employees posted and working in Urban or Non-Urban Areas appeared to be arbitrary and illegal.

When there is revision of wages and other allowances in N.C.W.A-VII in the year 2005 there cannot be two separate or different dates for implementation of different financial benefits or allowance.

Thus, Management is bound to pay arrears on H.R.A for both the Urban and Non-Urban Areas employee on the revised rate from the day the N.C.W.A-VII was implemented i.e. from 01.07.2001 and not from date desired by it i.e from 01.07.2004.

Now, let me see whether the Management is justified in recovering the alleged excess amount paid under H.R.A from its employees?

Nothing has come on record to show before Management took decision to recover the alleged excess paid to its employees under H.R.A on revision of their pay in view of N.C.W.A-VII or Standardization Committee meeting it had discussion with the Union or it brought to the notice of all the employee by issuing circulars or notice. It appears that the Management without giving any opportunity to the Unions had taken unilateral decision to recover the alleged excess payment towards H.R.A from the 3rd instalment of arrear payable to the employees.

Therefore, this Tribunal is of view excess amount, if any, paid towards H.R.A by the Management to its employee cannot be permitted to be recovered as the employees were not at their fault in the matter and it would have adverse monetary consequences upon the employees and when they were not put in notice of excess payment or being heard them or their unions on the issue of excess payment.

Thus, in view of the discussion made above, the issue under reference are disposed of as follows:-

Issue No. 1. The union is not justified in demanding uniform H.R.A @ 30% of all Non-executive employees and Coal India Ltd. Such demand for uniform H.R.A @ 30% for both the Urban and Non-Urban Areas employees regardless of classification of cities is found to be illegal and not proper. However, the selection of separate date i.e 01.07.2004 for implementation of only H.R.A on Revised Basic Pay is held to be illegal. The decision of the Management to implement Pay Revision Agreement by adopting two different date i.e. 01.07.2001 for implementation of Revised Basic Pay along with other allowance and a special date for implementation of Revised H.R.A on and from 01.07.2004 is hereby declared as arbitrary and illegal.

The Management is bound to give effect to N.C.W.A-VII as per 13:1:1to its entirety from 01.07.2001.

Issue No. 2. The unilateral decision of the Management without giving opportunity to the Union to place their submission or giving them opportunity to place them objection to deduct the alleged excess payment is held to be illegal and unjustified. Therefore, Management is directed to refund the alleged excess payment received by it from the 3rd instalment of arrear paid to the employees while giving effect to N.C.W.A –VII but without interest.

Issue No. 3. Therefore, the Union / employee of Coal India Ltd. are entitled to get H.R.A on the Revised Basic Pay at the rate to which they are entitled from 01.07.2001 and not from 01.07.2004. The Management is hereby directed to refund the alleged excess payment made towards H.R.A and of which it has recovered from the employees from their last instalment arrear but without any interest.

Management is directed to comply the above directions within six months from the date hereof failing which the Union shall be at liberty to execute the award as per law.

Accordingly, an award is passed Reference Case No. 15 of 2008 is disposed of against the Management without cost.

Send copy of this award to the Ministries for doing the needful.

Supply copy to the parties.

For Class B-1 Cities H.R.A was fixed @ 20% of R.B.P.

Justice K. D. BHUTIA, Presiding Officer

नई दिल्ली, 25 मई, 2023

का.आ. 880.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मुख्यालय तकनीकी समूह ईएमई, चित्राल लाइन्स, दिल्ली कैंट, नई दिल्ली, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री पप्पू, द्वारा -इंडस्ट्रियल वर्कर्स यूनियन, मेन सागरपुर, नई दिल्ली,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ संख्या 208/2018) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 24.05.2023 को प्राप्त हुआ था।

[सं. एल-42025-07-2023-98-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 25th May, 2023

S.O. 880.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 208/2018) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to Headquarter Technical Group EME, Chitral lines, Delhi Cantt, New Delhi, and Shri Pappu,Through– Industrial Workers Union, Main Sagarpur, New Delhi, which was received along with soft copy of the award by the Central Government on 24.05.2023.

[No. L- 42025-07-2023-98-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. PRANITA MOHANTY, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 208/2018

Date of Passing Award- 10th May, 2023

Between:

Shri Pappu S/o Sh. Mam Chand,
R/o 64/1, Manekshah Marg,
Delhi Cantt,
New Delhi-110010.

Through –Industrial Workers Union,
Rz-16C/7 Uppar Floor, Gali No. 3,
Main Sagarpur,
New Delhi-110046. ….Workman

Versus

1. Headquarter Technical Group EME,
Chitral lines, Delhi Cantt, New Delhi-110010. …. Management

Appearances:-

Claimant in person.
Sh. Pratap Singh, Ld.A/R for the management.

AWARD

This is an application filed u/s 2A of the Id. Act, wherein the claimant represented through the union had alleged illegal termination of his service by the management. A Prayer has also been made for reinstatement with full back wages. On notice, the mgt appeared and challenged the claim advanced by the claimant. The mgt also denied the employer and employee relationship. By order dated 07.01.2020 issues were framed. When the

claimant was called upon to adduce evidence he did not appear on the date fixed. However, on 1st Feb, 2023 he appeared and made a request for recording his statement. His statement is accordingly recorded on 1st Feb, 2023 and the matter was taken up on 11.2.2023 during the National Lok Adalat, after conciliation the parties agreed for disposal of the matter in terms of the settlement arrived between them. The claimant stated to have received 25000/- from the mgt towards full and final settlement of his claim.

In view of the settlement arrived this no dispute award is being passed. Hence ordered.

ORDER

The claim petition is dismissed for want of dispute raised by the claimant and this award is accordingly passed.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 25 मई, 2023

का.आ. 881.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उप निदेशक (सीजीआईटी), नई दिल्ली नगरपालिका परिषद, पालिका केंद्र, नई दिल्ली, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री रंजीत कुमार शर्मा, कामगार,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ संख्या 36/2018) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 24.05.2023 को प्राप्त हुआ था।

[सं. एल-42025/07/2023-101-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 25th May, 2023

S.O. 881.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 36/2018) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Depty Director(CGIT), New Delhi Municipal Council, Palika Kendra, New Delhi, and Shri Ranjeet Kumar Sharma,Worker, which was received along with soft copy of the award by the Central Government on 24.05.2023.

[No. L- 42025/07/2023-101-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-I, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 36/2018

Date of Passing Award- 15th May, 2023

Between:

Shri Ranjeet Kumar Sharma,
S/o Rama Shankar Sharma,
R/o H. No. 35 Sainik Enclave, Sector-5,
Mohan Garden, Uttam Nagar,
New Delhi-110059 ….Workman

Versus

New Delhi Municipal Council
Through Depty Director(CGIT)
Palika Kendra,
New Delhi-110001 ….Management.

Appearances:-

Shri A. Dingra, Ld. A/R for the Claimant.
Shri Raghvendra Upadhaya, Ld. A/R for the management

AWARD

This is an application filed u/s 2- A of the ID Act by the workman against the managements praying a direction to the managements to reinstate the workman into service with full back wages and all other consequential benefits.

As stated in the claim petition, the claimant workman was engaged in the management in Feb 2010 as a temporary mustor roll employee (TMR). On 14 .08.2014 he was posted as a Regular Mustor Roll Employee (RMR) and posted and joined at the Connaught Place Division under EE(CP). He is a native of the state of Bihar and from 27. 06.2017 to 08.07.2017 , he was on leave and had proceeded to his home state in the evening of 24.06.2017 as 25th and 26th were holidays. On 09.072017, which was a Sunday, he returned to Delhi, and on the following Monday i.e on 10.07.2017, joined his duty as usual. In the evening of 12.07.2017, he was called by police to P.S Sagarpur New Delhi. On his arrival there, he was suddenly arrested by police on the allegation that one Bacchi Kumari has lodged one FIR against him and on the basis of the same a case has been registered. Without giving him opportunity of informing his relatives, police produced him in the Patiala House Court and the Magistrate remanded him to jail custody. His relatives having come to know about the same arranged the assistance of an advocate and on 29.07.2017, he was released on bail. After release from custody, on 01.08.2017, he reported joining to the Junior Engineer of the Division he was working describing in detail the cause of his absence from duty. But he was not allowed to join. On the same day a show cause notice was issued to him calling him to explain within three days as to why he failed to intimate about his detention in police custody and as to why a police case has been registered against him, and why his service shall not be terminated. The claimant received the notice on 03.08.2017 and on the next day i.e on 04.08.2017, submitted his reply explaining that he has been falsely implicated in the police case and the complainant has not explained as to why she had not alleged this earlier. It was also explained that he was on leave from 26.07.2017 to 09.07.2017 and reported for duty on 10.07.2017. suddenly he was arrested on 12.07.2017 and remanded to judicial custody. Hence he had no scope of informing this fact to the management. Soon after his release from jail, on 01.08.2017 though he reported to the Junior Engineer, his joining was not accepted. On the contrary the show cause notice was served. Despite submitting proper explanation, the management in a hasty manner terminated his service. Finding no other way, he raised a dispute before the labour commissioner and on issue of a failure Report filed the application u/s 2A of the ID Act. In this claim petition the claimant has prayed for a direction to the management to reinstate him in service holding his termination illegal and the period of his absence be treated as leave.

The management filed written statement admitting that the claimant was working as a RMR since 14.08.2014 and his service was terminated on 18.08.2017 entirely on the basis of gross indiscipline and unauthorized absence from duty. The claimant had never informed the employer about his arrest and detention in judicial custody on the allegation of another female employee for causing sexual harassment to her and giving out threatenings. He had also suppressed that a criminal case on the charges u/s 354, 354B , 506 and 509 IPC was registered against him. It is further pleaded by the management that the claimant was working as a RMR which is a status of casual employee and the CCS Rule as applicable to permanent employees of central Govt. is not applicable to him. Hence there was no necessacity of framing a charge or conducting a domestic inquiry against him. Hence the management after due consideration of facts took the decision for termination of his service. No illegality was committed in doing so. There by the management took a stand that the claim advanced by the claimant is not maintainable.

The claimant filed replication denying the stand of the management and added that the allegation leveled against him by the informant Bachhi Kumari is all false and the management without waiting for a decision of the court on that allegation took a hasty decision and he had intimated about his detention in judicial custody at the earliest opportunity.

On these rival pleadings these issues were framed for adjudication.

ISSUES

1- whether the present proceeding before the Tribunal is maintainable?

2- Whether the termination of service of the claimant by order dt 18.08.2018 is illegal and without following the procedure and Rule.

3- Whether the claimant/workman is entitled to reinstatement in to service with back wages..

4- To what other relief the claimant is entitled to.

The claimant examined himself as WW1 and produced several documents as documentary evidence. Those documents include the copy of the FIR lodged at P S Sagarpur by Bachhi Kumari, the show cause notice served on the claimant, the reply to the same by the claimant, the order dt18.08.2017 terminating his service, the representation of Bachhi Kumari addressed to the chairman of NDMC requesting removal of the claimant from service and the joining report submitted by the claimant on release from judicial custody. The management examined one of it's section officer as MW1. She also filed documents marked as MW1/1 to MW 1//3. These documents are the office order appointing the claimant and others as RMRs containing the terms and conditions of their service, the Resolution dt 23.11.1989 adopting CCA Rules to the employees of NDMC excluding the casual workers, the intimation received from the Jt Director Vigilance regarding the complaint made against the claimant and that he has been remanded to Tihar Jail, copy of the leave application submitted by the claimant on 23.06.2017, requesting leave from 27.06.2017 to 08.07.2017 and the attendance register of the RM Rs. both the witnesses were cross examined at length.

FINDINGS

Issue No 2

This being the most important issue and decisive for other issues is taken up for consideration at the first instance. Admitted position is that the claimant was absent from duty for the period 27.07.2017 to 09.07.2017 and again from 12. 07.2017 to 29.07.2017.the claimant has stared that from 27.07.2017 to 09.07. 2017, he was on leave after intimating his reporting officer the JE and had proceeded to his native place on 24.07 evening as 25th and 26th were public holidays. He returned from leave and reached Delhi on 08.07.2017. but 9th being Sunday joined his duty on 10th. To support the claim and the oral statement the claimant has filed the photo copy of the leave application dt 23.06.2017, marked X which appears to have contained the endorsement of receipt of the JE on the same day. In the said application the claimant had informed his reporting officer about his proposed leave. There is no endorsement on the said document about refusal of leave. This document can not be said to be a self serving document as it contains the signature of the JE. Though the management witness during cross examination stated that there is no provision for the RMRs taking pre approved leave, no Rule or order to that effect has been proved. The management not even examined the JE concerned to state that the claimant had not intimated him before proceeding on leave. The other document filed by the claimant is the train ticket dt23.06.2017 and the medical prescription of the doctor at his home town to prove that from 23.06.2017 to 08.07.2017, he was on leave and absent from Delhi. The claimant had called for the attendance register of the RMRs for the month of July 2017. The management witness produced the same. It is observed from the said register maintained on daily basis that the claimant had attended his duty on 10th and 11th of July 2017 and thereafter remained absent.

The claimant has stated that suddenly he was arrested on 12.07.2017 and remanded to jail custody by the order of the Magistrate as a case was registered against him at PS Sagarpur Delhi on the FIR lodged by one Bachhi kumari, his land lady alleging certain things falsely. It is the stand of the claimant that the opportunity to contact the family members was denied to him before remand to judicial custody. In such a situation it was beyond his capability to inform the employer about his detention in judicial custody. However soon after release on 29th July, he reported in writing for joining duty explaining the cause of his absence. The respondent instead of taking him on duty served the show cause notice calling him to explain his unauthorized absence. He replied the same. But the respondent did not accept the same and terminated his employment. The report for joining, show cause notice, reply to the same and the order of termination of employment has been placed on record by the claimant as Exts WW1/1M3,WW1/10, WW1/11and WW1/12. The credibility of these documents have not been disputed by the respondent.

The only argument advanced by the management is that the RMRs are not entitled to approve leave and the claimant had failed to inform about his arrest and the RMRs not being covered under the CCA Rules there was no necessacity of initiating inquiry against him. The resolution by which application of CCA rules has been denied to the casual workers has been filed and the same has not been disputed by the claimant. The document filed by the claimant clearly shows that he was released from jail custody on 29th July 2017 and on 01.08.2017 he gave the joining report explaining the absence, which was not accepted and a show cause notice was handed

over to him. It is not understood how the respondent fixed the liability on the claimant detained in custody for not reporting the detention, which was the duty of the prosecuting and investigating agency to do so, when the said two agencies had the information about the employment status of the claimant. Hence it is concluded that the claimant cannot be held liable for not informing the employer about his detention in judicial custody which he did soon after his release on bail.

Now coming to the action taken by the employer against the claimant, it is found from the documents relied upon by both the parties that on 04.07.2017 one FIR was registered at PS Sagarpur on the complaint of one Bachhi Kumari against the claimant under section 354, 354B 506 and 509 IPC. Pursuant thereto, the claimant was arrested and remanded to jail custody which is evident from the report of the Deputy Director Vigilance filed by the mgt and admitted by the claimant. The claimant was released from jail on 29.07.2017. On 01.08.2017 he filed a written application to the Junior Engineer Drainage Service Centre CP Division NDMC seeking permission to join. The document contains the endorsement of different departments of the mgt. But the mgt, instead of allowing him to join served a show cause notice on the same day. The show cause notice has been filed as ww1/10. In the said show cause notice there is allegation that Bachhi Kumari a teacher employed in the school of NDMC has alleged sexual harassment by the claimant and on the basis of her report a case was registered and the claimant was arrested. But he failed to report his absence or account of the arrest. The reply of the claimant to this show cause notice has been field as ww1/11. The claimant gave a detail explanation stating that being in jail custody he could not intimate the office about his detention and soon after the release on bail, he informed the office about the situation by writing a written letter to the JE. This reply was given by the claimant on 04.08.2017. But the respondent did not find the same satisfactory and by office order dated 18.08.2017, which has been marked as ww1/12, terminated his service.

On behalf of the workmen it was argued that the decision was taken unilaterally without any enquiry being held. When the claimant was pleading about the false implication by Bachhi Kumari, at least she should have been called for a statement and an opportunity of questioning her should have been granted to the claimant. But nothing of that kind happened and the mgt in as haste, passed the order on 18.08.2017 terminating his service. The reply of the mgt in this regard is that the claimant was a Muster Roll Employee and the CCA Rule not being applicable, there was no need of conducting any inquiry. It is surprising to note that in the w/s the mgt has taken a stand that the claimant that for the police complaint made by Bachhi Kumari, the claimant was found to have committed mis-conduct and hence the mgt took a decision for termination of his service for such gross mis-conduct. This pleading of the mgt stands far away from the reasoning given in the termination order dated 18.08.2017. This order also stands in a different footing than the contents of the show cause notice. Though in the w/s and show cause noticereference has been made to the police complaint of Bachhi Kumari, leading to a conclusion of gross mis-conduct committed by the claimant, the order of termination nowhere refers to the same. Rather in the termination order it has been specifically stated that a complaint has been forwarded by Bachhi Kumari regarding disobedience, irregular timing and irresponsible behavior during office hours for which his service stands terminated. Neither any show cause notice was issued to the claimant for the alleged disobedience, irregular timing or irresponsible behavior nor any evidence was shown substantiating the same. But the mgt. in a hurried manner passed the order of termination.

It will not be out of place to say that the mgt in the pleading has taken a stand that for the sexual harassment allegation made by one Bachhi Kumari against the claimant his service was terminated. But the mgt never waited for the outcome of the police investigation or criminal trial. Merely because one FIR was lodged and the investigation ensued, the mgt, perhaps came to a conclusion about the proof of the alleged sexual harassment and thus terminated the service, which appears to be the illegal action amounting to unfair labour practice and victimization meted out to the claimant..

The mgt has taken a further stand that the claimant being a casual worker and RMR CCA Rule is not applicable. A resolution to that effect has been filed. It is not disputed that CCA rule is not applicable to the causal workers. But the provisions of section 25F of the ID Act clearly envisages the conditions precedent to the retrenchment of a workman who has been in continuous service for not less than one year under an employer. According to this provision, the claimant was to be given one month notice indicating the reason for retrenchment or one month pay in lieu of notice and retrenchment compensation which shall be equivalent to 15 days average pay for every completed years of continuous service. In this case as admitted by both the parties the claimantwas appointed as RMR on 13.08.2014. Prior to that he was working as TMR since the year 2010. It is also admitted that the mgt while terminating the service of the claimant had not complied the provisions of section 25F of the ID Act. On behalf of the claimant reliance has been placed in the case of **NDMC vs Sunil Sharma** decided by the Hon'ble High Court of Delhi by order dated 07.05.2021 in WPC no. 10946/2020 in which it has been held in the following manner

" it is not longer res integra that if the termination of a workman, employed as a casual or daily wager is termination simplecitor, procedure laid under Section 25-F of the Act has to be followed and if the foundation is a misconduct, then an inquiry must precede the penalty".

In the said judgmenct the Hon'ble High Court of Delhi have referred to the earlier judgment titled as **MCD vs Naresh kumar and ors**. **(2007SCC unlying, Delhi 1144),** wherein the Hon'ble High Court whiling dealing with the case of a workman employed as a Chowkidar with the MCD in the capacity of daily wager/casual/muster role worker, whose service was terminated on the allegation of misconduct, without serving any charge sheet or conducting any domestic enquiry, while upholding the award of the labour court, observed that the action of MCD in not conducting any inquiry prior to issuance of termination order is illegal and nonest. The fact of the said case squarely applies to the case in hand. Since the mgt, in a haste terminated the service of the claimant by order dated 18.08.2017 without inquiry on the allegation of disobedience, irregular timing and irresponsible behavior which was not established at all by the mgt the order of termination is illegal. The mgt even omitted to mention the reason of termination as the reasons shown in the show cause notice. All these aspects taken together, leads to a conclusion that the service of the claimant was illegally terminated by the mgt in gross violation of the provisions of the ID act and the principle of natural justice were not followed. At least the mgt could have waited for the termination of the criminal case. That having not been done, the one and only conclusion is that the claimant was subjected to unfair labour practice by way of harassment and his service was illegally terminated.

Issue no. 3 and 4

In view of the finding arrived in respect of issue no.2, it is held that the claimant is entitled to the relief of reinstatement into service with continuity of service. But he will not be entitled to back wages on the principle of no work no pay. Hence ordered.

ORDER

The claim petition be and the same is allowed on contest. It is held that the service of the claimant was illegally terminated by the mgt with effect from 18.08.2017. The mgt is directed to reinstate the claimant in service within one month from the date of publication of this award and grant him continuity of service failing which the claimant would be at liberty of getting the order executed. But no order is passed with regard to the prayer for back wages.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 25 मई, 2023

का.आ. 882.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार निदेशक, राष्ट्रीय बागवानी अनुसंधान एवं विकास प्रतिष्ठान, सागरपुर मोर, नई दिल्ली; निदेशक, राष्ट्रीय बागवानी अनुसंधान एवं विकास फाउंडेशन, चितेगाँव, नासिक महाराष्ट्र, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री कुलदीप सिंह, श्रीमती नारायणी देवी, कामगार, द्वारा- श्री मार्कण्डेय शुक्ल, महासचिव, जागृति मजदूर संघ,वजीराबाद, दिल्ली, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ संख्या 9/2016) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 24.05.2023 को प्राप्त हुआ था।

[सं. एल-42025/07/2023-104-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 25th May, 2023

S.O. 882.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 9/2016) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director, National Horticulture Research & Development Foundation,Sagarpur Mor, New Delhi ; The Director, National Horticulture Research & Development Foundation,Chitegaon, Nashik Maharashtra, and

Shri Kuldeep Singh, Smt Narayani Devi, Worker, Through –Sh. Markandey Shukla, The General Secretary, Jagriti Labour Union, Wazirabad, Delhi, Worker, which was received along with soft copy of the award by the Central Government on 24.05.2023.

[No. L- 42025/07/2023-104-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. PRANITA MOHANTY, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 9/2016

Date of Passing Award- 10th May, 2023

Between:

Sh. Kuldeep Singh, S/o Late Surjan Singh,
substituted by LR Smt Narayani Devi, W/o Late Sh. Kuldeep Singh,
Through –Sh. Markandey Shukla, ,
General Secretary, Jagriti Labour Union, 05/511,
Sangam Vihar,
Wazirabad, Delhi-110084. ….Workman

Versus

1. The Director,
National Horticulture Research & Development Foundation,
Horticulture Bhawan, Institutional Area, Pankha Road,
Sagarpur Mor, New Delhi-110058.

2. The Director,
National Horticulture Research & Development Foundation,
Chitegaon, Nashik Maharashtra-422201. ….Management

Appearances:-

Sh. M. Shukla, Ld. A/R for the claimant.
Ms. Deepti Singh, Ld.A/R for the management.

ORDER

This is an application filed u/s 2A of the ID. Act wherein the claimant had alleged illegal termination and reinstatement to service with back wages and consequential benefits.

Notice being served. The mgt appeared and filed written statement denying the claim advanced by the claimant. On completion of the pleadings issues were framed by order dated 13.04.2017. Thereafter the claimant adduced his evidence and the same was closed, the mgt had also adduced evidence by examining one witness R. K Yadav, who was the enquiry officer in the domestic enquiry conducted against the claimant. While the matter was pending for argument the claimant died and an application was filed for substitution of the LRs. By order dated 23rd 05.2022 the LRs were added and the matter was adjourned for argument on preliminary issue.

While the matter was stood thus one LCA was filed by the LRs of the deceased claimant which was registered as LCA NO. 4.of 2022 . During the pendency of that LCA a compromise was effected between the parties and the management paid the legal dues of the deceased claimant to his LRs . Thus, the LRs made a statement expressing that they have no dispute against the management.

Hence, this no dispute award is passed. Hence ordered

ORDER

The claim be and the same is dismissed as the claimant has no dispute against the mgt

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer.

नई दिल्ली, 25 मई, 2023

का.आ. 883.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन इंस्टीट्यूट ऑफ कैपिटल मारकीट प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1 मुम्बई के पंचाट संदर्भ संख्या (09/2016) को प्रकाशित करती है।

[सं. एल-16025/3/2016-आई आर(बी-II)]

सलोनी, उप निदेशक

New Delhi, the 25th May, 2023

S.O. 883.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 09/2016) of the Cent.Govt. Indus. Tribunal-cum-Labour Court No.1 Mumbai as shown in the Annexure, in the industrial dispute between the management of Indian Institute of Capital Markets and their workmen.

[No. L-16025/3/2016 -IR (B-II)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1

MUMBAI

Present: Smt. PRANITA MOHANTY, Presiding Officer

REFERENCE NO.CGIT-1/09 OF 2016

Parties: Employers in relation to the management of

Indian Institute of Capital Markets

And

Their workmen

Appearances:

For the first party No.1 Management	:	Absent.
For the second party workman	:	Absent.
State	:	Maharashtra

Mumbai, dated the 07th day of September, 2022

AWARD

1. The present reference has been made by the Central Government by its order dated 24/28/8/2015 passed in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947. The terms of reference as per the schedule to the said order are as under:

(1) "Whether the establishment of UTI-ICM known as Indian Institute of Capital Markets (IICM) and M/s. National Institute of Securities Markets (NISM) are industry considering the systematic activities carried out by the said establishment is an industry under the definition of Section 2(j) of I.D.Act 1947?

(2) If so, whether the action of the management in discontinuing certain facilities extended to the workmen on various occasions viz. DA, Medical OPD, Transport Allowance, Sodexo Coupons, Conveyance, HRA, Leave Fare concession, Book Allowances, Children Education Allowance, Reimbursement of Hospitalizaton Charges etc. vide administrative circular No. 109 of 2010-11 dated 07.02.2010, administrative circular No. 123 of 2013-14 dated 12.09.2013, administrative circular No.111 of 2012-13 dated 16.04.2012 and administrative circular No. 122 of 2013-14 dated 12.09.2013 without compliance of Section 9A of I.D.Act 1947 is just & proper? If not , what relief to the workmen concerned?

(3) Further, whether the action of the management of M/s UTI-(IICM) in issuing administrative circular No. 140 of 2014-15 dated 02.03.2015 addressed to all the employees during the pendency of conciliation proceedings, intimating the decision of the Governing Council of IICM to amalgamate IICM with NISM after closing hours on 31.03.2015 and indirectly discontinuing the services of all the existing employees and notified that they will automatically become employees of NISM, who will be offering employment to the said employees on contractual basis and on suitability basis is just and proper and whether such action of the management is amounting to illegal termination of services of all the workmen of IICM? If so, what relief to the workmen concerned?

(4) By the order dated 22.9.2016, notices were directed to be issued to the parties. Accordingly, notices were issued to the parties by Registered Post AD.

(5) Notices issued to the first party / Management as well as the second party / Union were duly served on the respective parties. Acknowledgement cards were received back.

(6) Perusal of the record reveals that neither the first party management nor the second party union were present before this Tribunal for filing the statement of claim till date.

(7) The case is taken up today. None is present for the first party management and none is present for the second party union.

(8) No Statement of Claim has been filed on behalf of the second party / Union.

(9) From the above narration of facts, it is evident that despite repeated dates having been fixed, none has appeared on behalf of the first party management and second party/Union. No Statement of Claim has been filed on behalf of the second party / Union. There is thus, no pleading or evidence filed on behalf of the second party / Union in support of its claim as contained in the Reference made to this Tribunal. No relief, therefore, can be granted to the second party / Union.

(10) Reference is consequently answered by stating that no relief can be granted to the second party / Union.

(11) Award is passed accordingly.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 25 मई, 2023

का.आ. 884.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स इंडस टॉवर लिमिटेड; मैसर्स नरूला इंफ्रास्ट्रक्चर प्रा. लिमिटेड, के प्रबंधतंत्र के संबद्ध नियोजकों बर्दवान जिला मोबाइल टॉवर स्थायी कर्मचारी संघ (आईएनटीयूसी),के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- आसनसोल के पंचाट (संदर्भ संख्या 06 OF 2016) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 18.04.2023 को प्राप्त हुआ था।

[सं. एल-40011/01/2016-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 25th May, 2023

S.O. 884.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 06 OF 2016) of the Central Government Industrial Tribunal cum Labour Court - Asansol as shown in the Annexure, in the Industrial dispute between the employers in relation to M/s. Indus Tower Limited ; M/s. Narula Infrastructure Pvt. Ltd, and Burdwan Zilla Mobile Tower Permanent Karmachari Union (INTTUC), which was received along with soft copy of the award by the Central Government on 25.05.2023.

[No. L- 40011/01/2016-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, ASANSOL.

Present: Shri Ananda Kumar Mukherjee, Presiding Officer, C.G.I.T-cum-L.C., Asansol.

REFERENCE CASE NO. 06 OF 2016

PARTIES: Burdwan Zilla Mobile Tower Permanent Karmachari Union (INTTUC).

Vs.

(1) Management of M/s. Indus Tower Limited,

(2) Management of M/s. Narula Infrastructure Pvt. Ltd.

REPRESENTATIVES:

For the Union/Workmen: None.
For the Management : Mr. S. K. Singh, learned advocate …. for opposite party No. 1.
Mr. S. H. Qadir, learned advocate …. for opposite party No. 2.

INDUSTRY: Telecommunication.

STATE: West Bengal.

Dated: 27.04.2023

AWARD

In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour, vide its Order **No. L-40011/01/2016-IR(DU)** dated 03.02.2016/04.02.2016 has been pleased to refer the following dispute between the employer, that is the Managements of (1) M/s. Indus Tower Limited and (2) M/s. Narula Infrastructure Private Limited and their workmen for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the implementation of State Minimum Wages notification by the employer and sole employer is justified without a valid State Government Minimum Wages notificate? If not what relief the workmen is entitled to? "

1. On receiving Order **No. L-40011/01/2016-IR(DU)** dated 03.02.2016/04.02.2016 from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 06 of 2016** was registered on 22.02.2016 and an order was passed issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses. Both parties appeared before the Tribunal through their authorized representatives.

2. The case was fixed up on 24.04.2023 for evidence of workman witness. Mr. S. K. Singh, learned advocate appeared for Indus Tower Limited. Mr. S. H. Qadir, learned advocate appeared for Narula Infrastructure Private Limited. On repeated calls at 02:10 PM none appeared for Burdwan Zilla Mobile Tower Permanent Karmachari Union (INTTUC). As per order dated 13.02.2023 Notice under registered post was

issued to the union directing to appear and take proper steps. Track Consignment Report reveals that Notice was served upon the addressee on 28.03.2023.

3. In this case initially the General Secretary, Burdwan Zilla Mobile Tower Permanent Karmachari Union (INTTUC) appeared and filed written statement but subsequently none appeared for workmen to purse this case. Ample opportunities were provided to the workers' union to represent the case but they did not take any step after service of Notices. Under such circumstance the Industrial Dispute is disposed of in the form of **a No Dispute Award**.

Hence,

ORDERED

that **a No Dispute Award** be drawn up in respect of the above Reference. Let copies of the Award in duplicate be sent to the Ministry of Labour and Employment, Government of India, New Delhi for information and Notification.

ANANDA KUMAR MUKHERJEE, Presiding Officer

नई दिल्ली, 22 मई, 2023

का.आ. 885.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुंबई पोर्ट ट्रस्ट प्रबंध तंत्र के सबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय औद्योगिक अधिकरण नं. 1 मुम्बई के पंचाट संदर्भ संख्या (26/2012) को प्रकाशित करती है।

[सं. एल-31011/8/2011-आईआर(बी-II)]

सलोनी, उप निदेशक

New Delhi, the 25th May, 2023

S.O. 885.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 26/2012) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No.1 Mumbai as shown in the Annexure, in the industrial dispute between the management of Mumbai Port Trust and their workmen

[No. L- 31011/8/2011-IR (B-II)]

SALONI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, MUMBAI

Present: Justice K.D. BHUTIA, PRESIDING OFFICER

REFERENCE NO. CGIT-1/26 OF 2012

Mumbai Port Trust ….1st Party

V/s.

Their Workmen ….2nd Party

Presence:

For the Management : Umesh Nabar, Adv.
For the Union : Absent
Mumbai dated the 12th day of April, 2023.

AWARD

The Management is present through its learned counsel.

None appear from the side of Union inspite of due service of notice upon it. Record reveals since 2020, the union who has espoused the present dispute has stopped appearing before the Tribunal to proceed with the hearing.

Therefore, it can be early assumed that union is no more interested to pursue the dispute.

Be that as it may, the Govt. of India on the strength of power conferred u/s 10(1)(d)(2A) of the I.D. Act, 1947 and vide order No. L-31011/8/2011(IR(B-II) dated 24.05.2012, has referred the following issue for adjudication by this Tribunal.

"Whether the action of management of Mumbai Port Trust, Mumbai in giving notice of change in service conditions dated 2.11.2010 proposing to reduce the working hours of the crew members of dredging flotilla including floating Crain crew from 12 hours to 8 hours is legal, just and proper? To what relief the workmen concerned are entitled?

Unfortunately, there is no materials in record apart from uncorroborated statement of claim of the union, to decide the above issue.

That apart record shows the union has not been taking any step to proceed with the hearing of the case since 2020.

Therefore, it can be presumed union has no more dispute with the management or grievance against the Management, for reducing the working hours from 12 to 8 hours.

More so, as per Indian Labour daily working hours may range from 8-10 hr. Weekly working hours can not exceed 48 hrs. Weekly limits is capped at 50-60 hrs. including overtime.

Prima facie it appear the Management perhaps in adherence to Labour Law, might have reduced the working hours from 12 hrs. to 8 hrs. in a day.

Anyway, in view of the above "No Dispute Award" is passed.

Accordingly, Reference No. CGIT-26 of 2012 is disposed of.

Justice K.D. BHUTIA, Presiding Officer

नई दिल्ली, 25 मई, 2023

का.आ. 886.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, दूरसंचार, भारत संचार निगम लिमिटेड टेलीफोन एक्सचेंज, फिरोजपुर, पंजाब; मंडल अभियंता, दूरसंचार भारत संचार निगम लिमिटेड टेलीफोन एक्सचेंज, फाजिल्का, पंजाब;सब डिविजनल इंजीनियर, ग्रुप-II, बीएसएनएल, फाजिल्का, पंजाब; जेटीओ श्री संजय रेवारिया, सी/ओ महाप्रबंधक, टेलीकॉम, भारत संचार निगम लिमिटेड टेलीफोन एक्सचेंज, फिरोजपुर, पंजाब; मेसर्स ए.एस. टेलीमैटिक्स प्रा. लिमिटेड जिला केंद्र जनकपुरी, नई दिल्ली, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री बूटा सिंह, कामगार, के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-1 चंडीगढ़ के पंचाट (संदर्भ संख्या 48/2020) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 25/05/2023 को प्राप्त हुआ था।

[सं. एल-42025/07/2023/-105-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 25th May, 2023

S.O. 886.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 48/2020) of the Central Government Industrial Tribunal cum Labour Court –1,Chandigarh, as shown in the Annexure, in the Industrial dispute between the employers in relation The General manager, Telecom, Bharat Sanchar Nigam Ltd. Telephone Exchange, Ferozepur, Punjab; Divisional Engineer, Telecom Bharat Sanchar Nigam Ltd. Telephone Exchange, Fazilka, Punjab; Sub Divisional Engineer, Group-II, BSNL, Fazilka, Punjab; JTO Sh. Sanjay Rewaria, C/o General manager,

Telecom, Bharat Sanchar Nigam Ltd. Telephone Exchange, Ferozepur, Punjab; M/s A.S. Telematics Pvt. Ltd., District Center Janakpuri, New Delhi, and Shri Buta Singh ,Worker,which was received along with soft copy of the award by the Central Government on 05/04/2023.

[No. L- 42025/07/2023/-105-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.

Present: Sh. J.K. TRIPATHI, Presiding Officer

ID No. 48/2020

Registered On:-22.03.2021

Buta Singh S/o Sh. Jeet Singh, R/o House No.821/D,
Mohalla Anandpur, Kacha Abha Road,
Fazilka, Distt. Fazilka (Punjab). …. Workman

Versus

1. The General manager, Telecom, Bharat Sanchar Nigam Ltd. Telephone Exchange, Ferozepur, Punjab.
2. Divisional Engineer, Telecom Bharat Sanchar Nigam Ltd. Telephone Exchange, Fazilka, Punjab.
3. Sub Divisional Engineer, Group-II, BSNL, Fazilka, Punjab.
4. JTO Sh. Sanjay Rewaria, C/o General manager, Telecom, Bharat Sanchar Nigam Ltd. Telephone Exchange, Ferozepur, Punjab.
5. M/s A.S. Telematics Pvt. Ltd. 808, AIC Jaina Tower-II, Plot No.6,
   District Center Janakpuri,
   New Delhi-110058. ….Respondents/Managements

Award

Passed On:-20.04.2023

1. The workman Buta Singh has directly filed this claim petition under Section 2-A of the Industrial Dispute Act 1947(hereinafter called the Act) for his illegal termination by the management.

2. The brief facts relevant for deciding this claim petition is that the workman joined his duty in the office of General Manager, Telecom, Bharat Sanchar Nigam Ltd. Telephone Exchange, Ferozepur, Punjab in 1997 but the workman joined his duty in 1997 in Fazilka town and he continuously worked upto 30.11.2019 i.e. approximately for a period of 23 years without any break with the respondents/managements. The workman during the initial years directly worked with the management and the management used to pay him salary in cash by SDO. At that time Sh. Sandeep Chalana was working as JTO and the workman worked with him for a period of one year. The workman was assured by the management at the time of the initial engagement that he will be regularized against the regular vacancy. The workman worked with SDO Group-II Fazilka and Sh. Sanjay Rewaria was working as J.E. and Sh. Babu Lal was serving as SDO. The workman was working under the direct control and supervision of the management of respondent nos.1 to 4. The workman worked in Arniwala Telephone Exchange for a period of three years. The workman also worked in Mandi Laduka, Teh. Kalandar and Bajewala till 30.11.2019 and also worked for a period of three years in Group-II Fazilka. The workman also worked repairing of telephone lines in village Chatirwala, Bareka, Roopnagar, Bakanwala, Jhandwala, Mira Sagla upto 16 years. The workman also performed duties of cable jointing, welding as well as digging of hole 4'x3'. The workman was not paid his salary for the last 11 months i.e. from January 2019 to November 2019 and when the service of the workman was terminated Sh. Sukhwinder Singh was working as JTO in Ferozepur, Punjab. From the date of joining i.e. from 1997 to 2009 salary was paid to the workman by the SDO. After 2009 the contractor Sh. Roshan Lal started deducting EPF from the salary of the workman and the workman never met to any contractor for performing his official duties. All of sudden without any rhyme and reason on 07.05.2020 the workman was not allowed to perform his official duty by the SDO BSNL and the services of the workman were terminated by the management illegally, arbitrarily, unlawfully and against the

provisions of Industrial Disputes Act, 1947. Before the termination of the services of the workman no notice or one month pay in lieu thereof was even given to the workman despite the fact that the workman completed more than 23 years approx. and no retrenchment compensation was offered rather fresh workmen were engaged by the management. The services of the workman was terminated by Sh. Sukhwinder Singh JTO and Sh. Sandeep Chalana was working as SDE Group-II in Fazilka. The mandatory provisions of Section 25-F, G and H of the Industrial Disputes Act, 1947 have grossly been violated by the management by terminating the services of workman and therefore, the action of the management amounts to unfair labour practice. In view of the averments made above, it is therefore prayed that the management be directed to reinstate the workman into service with full back wages w.e.f. 01.12.2019 with continuity of service along with 18% interest in the interest of justice.

3. The management has filed its written statement, alleging therein that there is no master and servant relationship between the workman and management nor the workman was engaged by the management nor paid any wages nor there is any supervision and control over the workman by the BNSL as alleged by the workman in his statement of claim. The work of petty nature was got performed through various contractors from time to time as per the policy of the Government and contract agreements had been executed with them. The contract agreements for the relevant period are attached as Annexure M-1 to M-29. It is denied that the workman had joined the duties in the O/o GMT, BSNL Ferozepur in 1997 and the workman worked with the BSNL upto 30.11.2019. It is further denied that the workman initially worked directly with BSNL and any salary was being paid by the SDO, BSNL in cash. It is further denied that the workman worked with SDO Group-II Fazilka in 1998 when Sh. Sanjay Rewaria was working as JE and Sh. Babu Lal was serving as SDO. It is further denied that the workman was working under the direct control and supervision of the management of respondent no.1 to 4 and payment of salary was being made by SDO concerned and worked in Arniwala Telephone Exchange for a period of three years or further in Mandi Laduka or Kalandar and Bajewala till 30.11.2019. The BSNL is duty bound to maintain the line, wire and connections provided to its customers for which there is due procedure to maintain the same. The Indian Telegraph Act, 1985 governs the same. Whenever the complaints are registered online or received otherwise, the same are to be attended by the Lineman followed by hierarchy which includes JTO and SDO who are regular employees working in respective cadres. It is denied that the workman has not been paid salary for last 11 months i.e. from January, 2019 to November, 2019. It is denied that the workman was terminated and Mrs. Sukhwinder Singh may be working as JTO but he had no concern with the workman as the workman may have been engaged by the contractors. The workman is making the false averments without any substance or evidence of his working continuously or regarding the payment. The workman has himself admitted that he worked with contractor Sh. Roshan Lal who started deducting EPF from his salary. It is specifically denied that the workman was terminated by the management illegally, arbitrarily and unlawfully whereas the facts are that the workman was never engaged by the BSNL nor paid him any wages nor he worked under the supervision and control of BSNL as the workman himself has not placed on record any evidence to prove his engagement or payment or supervision or control. Since the workman was not engaged by BSNL so the question of placing other employees in his place by BSNL does not arise. Since the workman was not the workman of BSNL nor his services were terminated by BSNL therefore, serving of notice of one month or pay in lieu thereof does not arise. The management has not violated the provisions contained in Section 25-F, G & H of the ID Act as alleged. In view of the position stated above, it is therefore, prayed that the claim of the workman may kindly be dismissed with cost as the workman is not entitled to the relief as prayed for in the interest of justice, equity and fair play.

During the pendency of the proceedings before this Tribunal on 20.04.2023, the workman Sh. Buta Singh has made a statement that he has amicably settled the matter with the management and he do not want to pursue the matter and prayed for withdrawal of the same. Since a settlement has been arrived at between the parties, there is no need to proceed with the matter further.

It is now well settled position in law that any settlement arrived at between the parties is legally binding upon both the parties in terms of the provisions of Section 18 of the Industrial Disputes Act, 1947.

In view of the statement made by the workman Sh. Buta Singh, the present claim petition is dismissed as settled. The statement made by the workman Sh. Buta Singh shall remain the integral part of the Award.

Let copy of the award be sent to the Central Government for publication of the same as required under Section 17(2) of the Act.

J. K. TRIPATHI, Presiding Officer

नई दिल्ली, 25 मई, 2023

का.आ. 887.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मुख्य महाप्रबंधक, विज्ञान इंडस्ट्रीज लिमिटेड, तरिकेरे, कर्नाटक; महाप्रबंधक (आईआर), भारत अर्थ मूवर्स लिमिटेड, बीईएमएल सौधा, बेंगलुरू, के प्रबंधतंत्र के संबद्ध नियोजकों और सचिव, विज्ञान उद्योग मजदूर संघ, तरिकेरे, कर्नाटक,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- बेंगलुरु, के पंचाट (संदर्भ सं. 34/2017) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 24.05.2023 को प्राप्त हुआ था।

[सं. एल-42011-01-2017-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 25th May, 2023

S.O. 887.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 34/2017) of the Central Government Industrial Tribunal cum Labour Court - Bangalore,as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief General Manager, Vignyan Industries Limited, Tarikere, Karnataka ; The General Manager (IR), Bharat Earth Movers Limited, BEML Soudha, BengaLuru , and The Secretary, Vignyan Industries Mazdoor Sangh, Tarikere, Karnataka, which was received along with soft copy of the award by the Central Government on 24.05.2023.

[No. L-42011-01-2017 -IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BENGALURU CAMP At HYDERABAD

Present : Shri IRFAN QAMAR, Presiding Officer

C R No. 34/2017

I Party	**II Party**
The Secretary, Vignyan Industries Mazdoor Sangh, Tarikere, KARNATAKA – 577 228.	1. The Chief General Manager, Vignyan Industries Limited, Tarikere, KARNATAKA – 577 228. 2. The General Manager (IR), Bharat Earth Movers Limited, BEML Soudha, BANGALORE – 560 027.

Appearances

I Party : **Muralidhara**
Advocate

II Party : 1. **Sh. N S Narasimha Swamy**
Advocate
2. **Sh. T Rajaram**
Advocate

1. The Government of India, Ministry of Labour vide order No. L-14011/01/2017-IR(DU) dated 24.10.2017 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred as "The Act") (14 of 1947) referred the following Industrial Dispute to this Tribunal for adjudication:

SCHEDULE

"Whether Vignyan Industries Mazdoor Sangh is justified in demanding Wages and allowance to the workers of Vignyan Industries Ltd., a holding Company of BEML at par with workers of Bharath Earth Movers Limited? If not, to what relief the workers are entitled, from which date and what directions are necessary in this regard?"

2. After Registering the matter notices were issued to parties who appeared. During the pendency of Industrial Dispute parties filed Joint Memorandum of Settlement wherein they have agreed that they have signed voluntarily and approached the tribunal to accept the settlement. Therefore, prayed to pass consent award in the interest of justice.

3. Perused the record, parties have filed Joint Memorandum of Settlement dated 29.09.2021 in the present matter voluntarily and prayed to pass consent Award in terms of the settlement. The Settlement has been duly signed by both the parties. Therefore, in view of the above settlement is allowed and the consent award in terms of the settlement is passed accordingly. Transmit.

(Dictated to Secretary to Court at Camp Court, transcribed by him, corrected and signed by me on 13th March 2023)

IRFAN QAMAR, Presiding Officer

नई दिल्ली, 26 मई, 2023

का.आ. 888.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय पुने के पंचाट (18/2022) प्रकाशित करती है।

[सं. एल-12011/41/2022-आईआर (बी-II)]

सलोनी, उप निदेशक

New Delhi, the 26th May, 2023

S.O. 888.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 18/2022) of the Industrial. Tribunal-cum-Labour Court Pune as shown in the Annexure, in the industrial dispute between the management of Bank of Maharashtra and their workmen.

[No. L- 12011/41/2022-IR (B-II)]

SALONI, Dy. Director

ANNEXURE

IN THE INDUSTRIAL TRIBUNAL MAHARASHTRA AT PUNE

Reference (IT) No. 18 of 2022

The Chairman and Managing Director,
Bank of Maharashtra
Lokmangal, Shivajinagar,
Pune 411 005 ….First Party

Versus

The President C/o Mahabank Navnirman Sena
Yashoda co-op. Housing society, Ranade Road,
Extension, Dadar, Mumbai 400028 ….Second Party

CORAM : Shri K.N. Gautam, Presiding Officer.

AWARD

(Dated : 15.04.2023)

This is a reference forwarded by Shram Mantralaya, Government of India, New Delhi vide order dated 22/04/2022 in exercise of the powers conferred under sub section (2A) of section 10 of Industrial Disputes Act, 1947 in respect of whether the Bank of Maharashtra indulged in unfair labour practices and whether the demand of Mahabank Navnirman Sena before the management of bank for regularization / permanency of 69 part time sweepers is legal and justified.

However, both the parties even after receipt of notices remained absent and failed to contest the Reference by filing their statement of claim and written statement. It seems that the parties have not interested in persuing matter which is the subject matter of the present reference.

Hence the following award :-

AWARD

1. The Reference is dismissed in default for want of prosecution.
2. No order as to costs.
3. Copies of this Award be sent to the Government

Authority as per rules.

K.N. GAUTAM, Presiding Officer

नई दिल्ली, 26 मई, 2023

का.आ. 889.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मुख्य महाप्रबंधक, दूरसंचार, बीएसएनएल, एबिड्स, हैदराबाद; सहायक महाप्रबंधक (प्रशासन), ओ/ओ सीजीएमटी, ए.पी. सर्किल, हैदराबाद, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री वेपचेदु रामेश्वर राव, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय-हैदराबाद के पंचाट (संदर्भ संख्या L.C. No.14/2012) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 17.05.2023 को प्राप्त हुआ था।

[सं. एल-42025-07-2023-88-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 26th May, 2023

S.O. 889.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. L.C.No.No. 14/2012) of the Central Government Industrial Tribunal cum Labour Court – Hyderabad as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief General Manager, Telecommunications, BSNL, Abids, Hyderabad ;The Assistant General Manager (Admn.),O/o CGMT, A.P. Circle, Hyderabad, and Shri Vepachedu Rameswara Rao, Worker, which was received along with soft copy of the award by the Central Government on 17.05.2023.

[No. L-42025-07-2023-88 -IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM- LABOUR COURT AT HYDERABAD

Present: - Sri Irfan Qamar, Presiding Officer

Dated the 3rd day of March, 2023

INDUSTRIAL DISPUTE L.C.No. 14/2012

Between:

Sri Vepachedu Rameswara Rao
S/o Anjaneyulu,

R/o H. No.3-5-303/1/A,
Pillichinnakrishna Thota,
Khammam. ..….Petitioner

AND

1. The Chief General Manager,
Telecommunications, BSNL,
Abids, Hyderabad.

2. The Assistant General Manager (Admn.)
O/o CGMT, A.P. Circle,
Hyderabad – 1. ….Respondents

Appearances:

For the Petitioner : M/s. M.V. Hanumantha Rao, Advocates
For the Respondent: Sri S. Prabhakar Reddy, Advocate

AWARD

Sri Vepachedu Rameswara Rao, who worked as Mazdoor (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents, Railway Electrification Project (REF), BSNL, Secunderabad seeking for declaring the proceeding No. TA/STB/20-2/REP/06-10/42 dated 8.6.2010 issued by the Respondent as illegal, arbitrary, discriminatory, violative of principles of natural justice and to set aside the same consequently directing the Respondents to regularize or re-engage the Petitioner into service duly granting all the consequential benefits and such other reliefs as this court may deems fit.

2. **The averments made in the petition in brief are as follows**:

It is submitted that the Petitioner has worked as Mazdoor in Railway Electrification Project(REF) Secunderabad to Nagpur from 1.1.1994 to 30.9.1996 for 1004 days along with others. The Petitioner submitted that thereafter he along with others continued on voucher payment basis for some time and thereafter on contract basis. Petitioner along with others have been requesting for regularization or to provide regular work still no action has been taken by the department, though they have worked for a considerable period. Further, petitioner came to know that by proceedings dated 21.11.2000 similarly situated 79 persons have been regularized by giving them "temporary status" by the respondent, in fact those persons are juniors to the petitioner and other similarly situated persons. Petitioner hails from poor family and have been pursuing the authorities since long time with a hope that the department would consider her claim in a positive manner. Petitioner submits that, as there was no action taken by the respondents he along with others approached Hon'ble Central Administrative Tribunal, Hyderabad Bench, at Hyderabad by filing OA. Nos. 100/10 and 101/10 and the Hon'ble Tribunal after hearing both the parties disposed of the OAs, on 10.2.2010 with specific directions "since the applicants in the OA also have similar claims as the applicants in the WP.No.12872/08, I consider it appropriate to dispose of this Original Application by giving a direction to the applicants to file individual representations to the respondents giving full details namely, their addresses, places at which they were engaged, the period for which they were engaged etc., within a period of 4 weeks and on receipt of such representations, the respondents shall examine their applications with reference to the records and the scheme that was in force and pass orders within a period of 3 months from the date of receipt of such representation." It is submitted that, as per the orders of the Hon'ble Tribunal the petitioner and others have submitted elaborate representations to the Respondent No.1 along with order passed by Hon'ble Tribunal and also attendance book etc. on 3.3.2010 the Respondent No.1 instead of appreciating the circumstances and without proper verification of records and without providing opportunity of being heard, Respondent has issued the impugned letter dt.8.6.2010 stating,

" i) With reference to the representation, pursuant to the directions of the Hon'ble Tribunal dated 10.2.2010 in OA. No.100/10 it is informed that the same has been duly considered having regard to the policy and availability of records and it is regretted that it is not open to re-engage you as casual labours or grant of temporary status under the scheme dt.7.10.1989 which has exclusive application to casual labour who have engaged prior to 31.10.1985 up to 22.6.1988 and continued as such. The following have duly taken into consideration for the aforesaid decision. All the casual labors who were eligible as per letter dt.29.9.2000 of DOT were regularized as one time measure.

(ii) Records pertaining to Railway electrification Project are not available for due verification of information furnished by you as they were weeded out as per the retention schedule. The letter of appointment and payment thereof is requisite record to verify your engagement from 1.1.1994 to 30.9.1996 and the basis for the same while DOT, New Delhi letter No.270-6/84-STN dt.22.6.1988 imposed ban on engagement of casual labours including project circle.

(iii) The certification by the Divisional Engineer about such engagement is not acceptable in the absence of records as indicated above.

(iv) It is stated that you have been disengaged as casual labour and also thereafter continued with contractor and thus there is no employer-employee relationship at any point of time thereafter and as such there is no scope to re-engage you as casual labour and also in view of the complete ban as per DOT, New Delhi letter no.269-4/93 STN-II dt. 12.2.1999 and further affirmed vide letter no.269-4/93/STN Il dt.15.6.1999 and the said policy is continuing.

v) The violation of provisions of Sec.25F of ID Act, 1947 having questioned in the appropriate forum at any time and as such disengagement has become final for all purposes.

vi) This disposes of your representation and it is hereby clarified that no further correspondence will be entertained on this subject."

Petitioner submitted that the proceedings dated 8.6.2010 are ex.facie illegal, arbitrary, discriminatory and contrary to record and violative of principles of natural justice and violative of Art. 14 and 16 of Constitution of India. It is submitted when similarly situated persons were regularized the respondent ought to have extended the same benefit to the petitioner also. Further, the reasoning recorded by the respondent as mentioned in the clause-(i) of the impugned order stating that benefit of extension of temporary status under scheme dated 7.10.1989 is only for casual labours who have engaged prior to 31.10.1985 up to 22.6.1988 is not tenable and when the department had extended similar benefit to similarly situated persons and having extracted work from the petitioner during subsequent period, denial of said benefit amounts discrimination. The contention of the respondents as mentioned in clause-(ii), records pertaining to Railway Electrification Project are not available as have weeded out as per the retention schedule is also not tenable. It is submitted non-availability of the records in the department cannot be attributed to the petitioner and respondent ought to have accepted the records produced by the petitioner. It is submitted regarding para no (4) of the impugned order that when similarly situated persons were engaged and records shows the services rendered by the petitioner the contention that there is no relationship as employer and employee is also not tenable. Clause (5) of the order is not maintainable in respect of the claims of petitioner as he has been pursuing with the department to re-engage him in the respondent department in view of their past experience. The petitioner is having record and also the department had considered similarly situated persons as such the petitioner is entitled for relief. It is submitted that the impugned order is not only illegal but also contrary to earlier directions issued by the Hon'ble Central Administrative Tribunal as such as a last resort the petitioner is approaching this Hon'ble court. The petitioner, along with others approached Hon'ble Central Administrative Tribunal Hyderabad Bench at Hyderabad and filed OA. No. 1229/2010 and after hearing both the sides the Hon'ble Tribunal has directed the applicants therein to approach concerned Labour court under Industrial Dispute Act, 1947 and hence, this petition. It is submitted the petitioner and others have filed their concerned days book duly signed by the employer on every month ending, identity card, etc., the days book clearly postulates all the relevant information of the petitioner with regard to work i.e. MRPTS work, cable work, or alignment, store work, etc., and Petitioner was paid Rs.60/- per day. It is therefore prayed that this Hon'ble Tribunal may be pleased to i) Declare the impugned letter No.TA/STB/20-2/REP/06-10/42 dated 8.6.2010 issued by the respondent as illegal arbitrary, discriminatory and violative of principles of natural justice and consequently set aside the said letter.

3. **The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows**:

The Respondent submitted that the claim petition is misconceived and is barred by limitation. There is no engagement of casual labour in BSNL, after 1.10.2000 and the casual labour who have been engaged as such before the imposition of ban vide letter No.270/6/84-STN, New Delhi dated 30.3.1985 and letter No.270-6/84-STN dated 22.6.1988 for the project circles and the line dismantling in the Electrification project circles have been continued in BSNL as a matter of policy and the Petitioner having been engaged in the project after the imposition of ban vide letter dated 22.6.1988 is not covered by the policy thereof and it is not open for the Petitioner to assert for reengagement or regularization under the said policy. The claimant is confusing the Hon'ble Tribunal with regard to the letter No.TA/STB/20-2/REP/06-10/22 dated 27.4.2010 pursuant to the directions of the Hon'ble Central Administrative Tribunal dated 10.2.2010, in OA No.100/2010 filed in continuation of WP No.12872/2008 in the High Court seeking for the identical relief and the communication

dated 27.4.2010 based on the directions dt.10.2.2010 in O.A.No.100/2010 to comply with a judicial order notwithstanding the fact that the said O.A.No.100/2010 is misconceived and not maintainable having regard to the definition of employee in Rule 3(8) of BSNL & CDA Rules, 2006 implemented as such from 10.1.2006 thereby leaving no scope to exercise any jurisdiction by the Hon'ble Tribunal and on 28.2.2011 in O.A.No.1229/2010. It is not open for the claimant to assail the same before this Hon'ble Court in any manner for any purpose. The Railway Electrification project for line dismantling is distinct and different and the said project is out side jurisdiction of the respondent thereby leaving no scope to reengage any casual labour engaged by the said projects organization after the imposition of the ban and disengaging thereafter and entrustment of the work to a contractor thereby leaving no scope for reengagement and regularization as per the settled law. The Petitioner is relying on the documents which do not form part of the record of the respondent without any letters of engagement and payment particulars while the maintenance of the records in not the administrative concern of the answering respondent and no records as such are maintained after the expiry of three years relating to muster roll as per the retention schedule. It is therefore prayed that this Hon'ble Tribunal may be pleased to dismiss the claim petition.

4. Petitioner filed chief examination affidavit and examined himself as WW1 reiterating the facts stated in claim petition stated that, he has worked as Mazdoor (casual labour) in Railway Electrification Project (REF) Secunderabad to Nagpur from 1.1.1994 to 30.9.19996 for 1004 days along with others. Thereafter, he, along with others continued on voucher payment basis for some time and thereafter on contract basis requesting for regularization and no action has been taken by the department, though they have worked for a considerable period.

5. Respondent did not adduce any evidence on their behalf. Both parties filed written arguments as well as submitted oral arguments.

6. Heard. Perused the pleadings of both the parties.

7. **The following points arise for consideration**:-

I. Whether the Petitioner is eligible to be regularized as temporary status with Respondent employment under the scheme Casual Labourers (Grant of Temporary Status and Regularization) Scheme 1989?

II. Whether order dated 8.6.2010 passed by Respondent on Petitioner's representation is just?

III. To what relief if any, the Petitioner is entitled?

Finding:

8. **Points No.I & II**: Before proceeding to determination on points, it would be relevant to narrate the facts in the back drop of the matter. As pleaded by Petitioner workman Sri V. Rammeshwara Rao, he has worked as mazdoor (casual labour) in Railway Electrification Project, Secunderabad to Nagpur from 1.1.1994 to 30.9.1996 for 1004 days along with others. The Petitioner along with others continued on voucher payment basis for some time and thereafter on contract basis. He along with others have been requesting for regularization and to provide the regular work. Still no action has been taken by the Department, though they have worked for a considerable period. It is also pleaded that Petitioner came to know that by proceedings dated 21.11.2000 similarly situated 79 persons have been regularized by giving them temporary status by the Respondents. Since no action was taken by the Respondents he along with others approached Hon'ble Central Administrative Tribunal, Hyderabad Bench at Hyderabad by filing OA No.100/10 and 101/10 and the Hon'ble Tribunal after hearing both the parties disposed of the OAs, on 10.2.2010 with specific direction which reads as follows: "since the applicants in the OA also have similar claims as the applicants in the WP No.12872/08, I consider it appropriate to dispose of this OA by giving a direction to the applicants to file individual representations to the respondents giving full details namely, their addresses, places at which they were engaged, the period for which they were engaged etc., within a period of 4 weeks and on receipt of such representations, the respondents shall examine their applications with reference to the records and the scheme that was in force and pass orders within a period of 3 months from the date of receipt of such representation." The Petitioner in compliance of the above order moved representation dated 3.3.2010 to the Respondent authority and Respondent rejected the representation by passing impugned order dated 8.6.2010. Against this impugned order present industrial dispute petition has been filed by the workman before the Tribunal. It is also submitted that the Petitioner along with others have challenged impugned order dated 8.6.2010 rejecting the representation of Petitioner and filed OA No.1229/2010 and after hearing both the sides Hon'ble Tribunal has directed the applicant to approach the labour court under I.D. Act, 1947. The copy of the order dated 28.2.2011 passed in OA No.1229/2010, G. Pentaiah and others Vs. Union of India has been filed wherein Hon'ble Tribunal has observed as below:

"8.Admittedly, the applicants were engaged between 1.1.1994 and 30.9.1996 and they do not come under the scope of the scheme. However, a direction was given by this Tribunal earlier to examine their cases since the applicants claimed that some juniors who were appointed subsequently had been regularized. I now find that the Respondents have rejected the claim on the ground that relevant records have been weeded out. the matter raised disputed questions of fact viz., whether the applicants were employed as casual labourers for more than 1000 days and whether they are eligible for temporary status, etc. In the absence of records, it is not possible for this Tribunal to adjudicate this matter.

9. I, therefore, dispose of this application with a direction to the applicants to approach the labour authorities under the Industrial Disptues Act, 1947, if they are so advised, with all the relevant material so that a decision on their eligibility for temporary status or otherwise can be taken by the Respondent authorities. The Learned Counsel for the applicants has no objection to such a direction being given."

Therefore, in view of the above direction of Hon'ble Central Administrative Tribunal, we proceed to decide to determine the question whether the applicant was engaged as casual mazdoor for more than 1000 days and they are eligible for temporary status.

9. In this regard, the Petitioner has pleaded that he has got engaged as mazdoor(casual labour) in Railway Electrification Project, Secunderabad to Nagpur form 1.1.1994 to 30.9.1996 for 1004 days along with others. It is also submitted that he along with others continued as such on voucher payment basis and later on contract basis.

10. On the other hand the Respondent has filed counter stating therein that there is no engagement of casual labour in BSNL after 10.10.2000 and the casual labour who have been engaged as such before the imposition of ban vide letter No.270/6/84-STN, New Delhi dated 30.3.1985 and letter No.270-6/84-STN dated 22.6.1988 for the project circles and the line dismantling in the Electrification project circles have been continued in BSNL as a matter of policy and the Petitioner having been engaged in Railway Electrification Project after the imposition of ban in project circles vide letter dated 22.6.1988 is not covered by the policy thereof and it is not open for the Petitioner to assert for reengagement or regularization under the said policy. It is submitted that the Petitioner is not covered under the definition of employee with Rule 3 sub clause 8 of BSNL & CDA Rules, 2006. Therefore, it is not open for the claimant to assail the same in any manner for any purpose. It is also submitted that Railway Electrification Project for line dismantling is distinct and different and the said projects is out side jurisdiction of the answering Respondent thereby leaving no scope to reengage any casual labour engaged by the said projects organization after the imposition of the ban and disengaging thereafter and entrustment of the work to a contractor thereby leaving no scope for reengagement and regularization as per the settled law. It is clear from pleadings of the parties that the Petitioner had worked as a mazdoor in Railway Electrification Project of the Respondent on contract basis. The Petitioner has submitted the documents in support of his allegation which are: Ex.W1 is photocopy of order dated 8.6.2010 which the Respondent authority has rejected the representation of the Petitioner by assigning reasons therein. Ex.W2 is a copy of representation dated 3.3.2010. The last para of the representation reveals that Petitioner has prayed for relief from Respondent to provide him employment, whereas in petition he has sought relief of regularization in the Respondent employment. Document Ex.W3 and W4 are photocopies of the orders of Hon'ble Central Administrative Tribunal passed in OA 1229/2010 and 100/2010. Other document Ex.W5 is photocopy of order passed in OA No.101/2010 dated 10.2.2010. The documents Ex.W6 to W9 are photocopies of the proceedings which were supplied by the Respondent to the Petitioner which contains list of casual labour. Ex.W10 is photocopy of letter regarding temporary status and Ex.W11 is the attendance sheets of the workman Petitioner which has been signed by Divisional Engineer, Telecom, Secunderabad which reveals that the Petitioner has worked as mazdoor from 1.1.1994 to 30.9.1996 in Railway Electrification Project.

11. **It would be relevant to reproduce the provision of Sec.2(oo)(bb) of I.D. Act, 1947 which provide that,**

" (oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include:-

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; "

12. **The Hon'ble Apex Court in the case of S.M. Nilajkar and ors. Vs. Telecom, District Manager has held:** " the termination of the service of workman engaged in a scheme or project amounts to retrenchment within the meaning of sub-clause (bb) subject to the following provision being satisfied:

i) That the workman was employed in a project or scheme of temporary duration;

ii) The employment was on contract and not as a daily wager simplicitor, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project; and

iii) The employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.

iv) The workman ought to have been apprised or made aware of the above said terms by the employer at the commencement of employment.

13. Since the Petitioner has alleged that he has worked as mazdoor from 1.1.1994 to 30.9.1996 in the Railway Electrification Project as contract labour. It goes to show that Petitioner has worked in the Respondent employment on a project which is open for a limited time and after completion of the project the Petitioner cannot claim any employment or regularization in the service of the Respondent. As far as the contention of the Petitioner is concerned that he should be regularized as other casual workers regularized under the scheme, it is settled law that any contract workman has no right to seek regularization of employment from employer, since it is a matter of discretion of the employer. Even otherwise, if a fresh contract contemplated to secure employee appointment with higher qualification or seek a fresh job on contractual employment having more skills, the employer will always have an authority to decide what is best for improving its functioning and which can be depend on work requirements.

14. Petitioner contended that Respondent has mentioned that in the impugned order the record pertaining to Railway Electrification Project are not available for due verification of the information furnished by the Petitioner. As they have weeded out as per retention schedule. The letter of appointment and payment thereof is requisite record to verify the engagement from 1.1.1994 to 30.9.1996. It is the duty of the authority to protect official files and record, it would be worthy to mention here that Petitioner had worked as Mazdoor in Respondent project for the period 1994-1996 as contract labour and he raised present industrial dispute by filing the petition u/s 2A(2) of the I.D. Act, 1947 in July, 2012. Long span of time more than 15 years have elapsed. Respondent in his counter has stated that no record as such are maintained after the expiry of three years relating to the muster roll as per the retention schedule. Since there was gross latches of inordinate delay on the part of Petitioner in raising present industrial dispute. Respondent is not supposed to maintain record of contractual labour beyond retention schedule. Therefore, in the case of non-production of the record by the Respondent, no adverse inference can be drawn against him in this case.

15. Respondent submitted that there is no engagement of casual labour in BSNL after 1.10.2000 and the casual labour who have been engaged before the imposition of the ban vide letter No.270/6/84-STN dated 30.3.1985 and letter No.270-6/84-STN dated 22.6.1988 for the project circles and the line dismantling in the Electrification project circles have been continued in BSNL as a matter of policy and the Petitioner having been engaged in Railway Electrification Project after the imposition of ban in project circles vide letter dated 22.6.1988 is not covered by the policy thereof and it is not open for the Petitioner to assert for reengagement or for regularization under the said policy. The Respondent has submitted the copy of letter No.270/6/84-STN dated 30.3.1985 wherein it is mentioned that the Telecom Department has directed to stop the recruitment or employment of casual labour of any kind, any type of work. Further, copy of letter No.270-6/84-STN dated 22.6.1988 which is regarding casual labour recruitment wherein it is mentioned (para 2) that, there shall be no recruitment of casual labour even for specific period and it was directed to Respondent Department to engage from neighbouring divisions, employed for the project or electrification work. Further, the copy of the letter of DG Telecom, New Delhi dated 7.11.1989 has been filed wherein it is mentioned that the casual labourers could be engaged after 30.3.1985 in projects and Electrification Circles only for specific works and on completion of the work the casual labourers so engaged were required to be retrenched. It is also mentioned that as per the direction in letter dated 22.6.1988 fresh recruitment of casual labourers even for specific works for specific periods in Projects and Electrification Circles also should not be resorted to. Therefore, in view of the ban on engagement of casual labourers the claim of the Petitioner is not maintainable. Since the Petitioner was engaged through contractor in the Railway Electrification Project which was meant for a specific period and after completion of the project work his employment is terminated and he is not eligible to claim for regularization in view of above letters and his status as contract labour.

16. Now the question arises whether there existed employee and employer relationship between the claimant and Respondent. Petitioner has admitted the fact that he was doing the work as a contract labourer in the Respondent Department. Further, to prove the employment there has to be a strict evidence to show some nexus between the claimant and the Respondent. This can be any kind such as appointment letter, monthly payment slip, deduction of Provident Fund, payment of any dues, which can show that he was in the employment of the Respondent. **In the case of Automobile Association of Upper India vs. Presiding Officer Labour Court-II, 2006 LLR page 851 wherein the** Hon'ble Delhi High Court held, " Engagement

and appointment in service can be established directly by the existence and production of appointment letter, a written agreement or by circumstantial evidence of incidental and ancillary records which would be in the nature of attendance register, salary registers, leave records, deposit of Provident Fund contribution and employees state insurance contribution etc.. The same can be produced and proved by the workers or he can call upon and caused the same to be produced and proved by calling for witnesses who are required to produce and prove these records."

17. But in the present case the claimant Petitioner has not produced any single piece of evidence showing that he was issued appointment letter by the Respondent. In fact, he has not disclosed date of actual joining of the employment as casual labour of the Respondent. Therefore, the contention of the Petitioner that he was casual labourer is not found to be proved by his evidence. Hence, he was not covered under Regularization Scheme rather he was contract labour as he has admitted in petition.

Thus, Points No.I & II are answered accordingly.

18. **Point No.III**: In view of the above discussion, it is clear that the Petitioner was not a casual labourer, rather had worked as contract labour for the period from 1994 to 1996. Therefore, Petitioner is not eligible to be regularized as a casual labour in the Respondent employment. The impugned order dated 8.6.2010 passed by Respondent needs no interference and petition is liable to be dismissed. In view of the finding given in Points No.I & II, the Petitioner is not entitled to any relief as prayed for regularization or reengagement. However, the Respondent has submitted that this Tribunal has disposed of LC No.8/2012 vide its order dated 29.2.2020 and granted relief of compensation to the Petitioner. Therefore, in view of the above, Petitioner is liable for getting the compensation of Rs.50,000/.

Thus, Point No.III is answered accordingly.

ORDER

In view of the findings given above, it is hereby ordered: The petition of the Petitioner is allowed in part. The Respondents are directed to pay a sum of Rs.50000/- (Fifty thousand rupees) to the Petitioner towards compensation within four months from the receipt of this order, failing which the Petitioner is at liberty to take appropriate steps according to Law.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 3rd day of March, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri Vepachedu Rameshwar Rao	MW1: Nil

Documents marked for the Petitioner

Ex.W1: Photostat copy of the Order dt 27-4-2010

Ex.W2: Photostat copy of the Representation of WW1 dt.3.3.2010

Ex.W3: Photostat copy of order passed in OA. No. 1229/2011

Ex.W4: Photostat copy of order passed in OA. No. 100/2010

Ex.W5: Photostat copy of order passed in CA. No. 101/2010

Ex.W6: Photostat copy of proceeding of respondent dt 9-5-2007

Ex.W7: Photostat copy of proceeding of Director, BSNL Railway Electrification Project Secunderabad dt. 12-9-2002

Ex.W8: Photostat copy of list of candidates issued by Div. Engineer, Secunderabad dt. 11-9-2002

Ex.W9: Photostat copy of proceeding Dt. 13-11-2007 providing information under RTI Act

Ex.W10: Photostat copy of letter dt.21-11-2000 with regard to temporary status

Ex.W11: Photostat copy of Days Book signed by authority

Ex.W12: Photostat copy of Identity card of petitioner

Ex.W13: Copy of order passed in WP No.12872/08

Documents marked for the Respondent

NIL

नई दिल्ली, 26 मई, 2023

का.आ. 890.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मुख्य आयुक्त, सीमा शुल्क और केंद्रीय उत्पाद शुल्क,विजाग जोन, विशाखापत्तनम; आयुक्त,सीमा शुल्क और केंद्रीय उत्पाद शुल्क, तिरुपति आयुक्तालय; तिरुपति;सहायक आयुक्त, सीमा शुल्क और केंद्रीय उत्पाद शुल्क, मंडल कार्यालय, कुरनूल मंडल, कुरनूल; मालिक श्री बी.वी. रमना, श्रीकृष्ण रोजगार सूचना और सेवाएं, नेहरू नगर, कुरनूल, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री पी. वनमन्ना, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-हैदराबाद के पंचाट (संदर्भ संख्या M.P. No. 7/2007) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 17.05.2023 को प्राप्त हुआ था।

[सं. एल-42025-07-2023-111-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 26th May, 2023

S.O. 890.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. M.P. No. 7/2007) of the Central Government Industrial Tribunal cum Labour Court – Hyderabad as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief Commissioner, Customs and Central Excise, Vizag Zone, Visakhapatnam ;The Commissioner, Customs and Central Excise, Tirupati Commissionerate; Tirupathi; The Assistant Commissioner, Customs and Central Excise, Divisional Office, Kurnool Division, Kurnool; Proprietor Shri B.V. Ramana, M/s. Shri Krishna Employment Information and Services, Nehru Nagar, Kurnool, and Shri P. Vanamanna, Worker, which was received along with soft copy of the award by the Central Government on 17.05.2023.

[No. L- 42025-07-2023-111-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT, HYDERABAD

Present: - Shri IRFAN QAMAR, Presiding Officer

Dated the 20th day of April, 2023

M.P. No. 7/2007

Between:

Sri P. Vanamanna,
S/o Layanna,
R/o Pasupalla Village & Post,
Kurnool Mandal,
Kurnool – 518004. ….Petitioner

AND

1. The Chief Commissioner,

Customs and Central Excise,
Vizag Zone, Visakhapatnam.

2. The Commissioner,
Customs and Central Excise,
Tirupati Commissionerate,
9-86-A, West Church Compound,
M.R. Palle Road, Tirupathi-517502.

3. The Assistant Commissioner,
Customs and Central Excise,
Divisional Office, Kurnool Division,
Near Children's Park, N.R. Peta,
Kurnool – 518 004.

4. M/s. Sri Krishna Employment
Information and Services,
No.40-790-2, Nehru Nagar,
Kurnool – 518 004, rep. by its
Proprietor Shri B.V. Ramana. ….Respondents

Appearance:

For the Petitioner : Sri William Burra, Advocate
For the Respondent : Sri Kapu Ramakrishna Reddy, Advocate for R1, R2 & R3
Sri M.V.L.Narasaiah, Advocate for R4

ORDER

This petition has been filed by Sri P. Vanamanna under Sec.33 C(2) of the Industrial Disputes Act, 1947 for payment of the amount wage due to Petitioner from Respondent and arrear of revised wages as well as to direct the Respondents to pay the dues with interest @12% p.a.

2. The brief facts of the application are that the Petitioner was engaged by the Respondent No.3 orally on 11.11.1998. The duties performed by him in Respondent's office were "cleaning, sweeping, gardening and certain miscellaneous works like supplying Coffee/Tea or water to the permanent and regular employees." The Petitioner continued to be engaged as Casual Labour from 11.11.98 to 31.1.2007. The services of the Petitioner were orally terminated by Respondent No.3 w.e.f. 01.02.2007. The said oral termination of Petitioner was illegal, unjust, contrary to the Provisions of the I.D.Act, 1947 and also against the Principles of natural justice. A separate application u/s 2A(2) of the I.D.Act, 1947 has been submitted challenging the illegal termination. The Petitioner submits that while he was working as Casual Labour in the 3rd Respondent Office, he engaged M/s. Sree Krishna Employment Information and Services, Kurnool w.e.f. 01.12.2004 as Labour Supply Agency and engaged labour through the above Agency. However, the Petitioner continued to render his services upto 31.1.2007 as direct labour. The 3rd Respondent however failed to pay the salary/wages from 01.12.2004 to 31.01.2007 and also arrears of difference in wages from 01.4.2004 to 30.11.2004. The Petitioner approached the 3rd Respondent for payment of his salary/ wage and difference in wages every month, but the 3rd Respondent refused to pay the same on the ground that the Petitioner should register his name through the labour supply agency. The Petitioner therefore approached the CAT, Hyderabad and thereafter the High Court of Andhra Pradesh, Hyderabad and obtained interim stay, thereby the Respondents were directed to maintain status quo. The Petitioner submits that he was in the service of the 3rd Respondent upto 31.1.2007 and hence he is entitled for difference in wages and salary for the period from 1.4.2004 to 31.1.2007. The Petitioner further submits that during the period from 1.4.2004 to 30.11.2004, he is entitled for arrears of Rs. 50/- per day consequent upon the revised rates of wages as per the Proceedings of the Collector and District Magistrate, Kurnool which came into force w.e.f. 1.4.2004. The Petitioner is entitled to towards difference in wages of Rs.87,960/-, and Wages/ Salary from 1.4.2004 to 31.1.2007. It is also submitted that Sri A. Rajasekhara Reddy, Asst. Solicitor General of India, High Court of A.P. at Hyderabad has also given his opinion to the 1st Respondent to pay the wages as per the interim orders of the Hon'ble High Court of A.P., Hyderabad. But the Respondent did not pay the wages till date in gross violation of the provisions of law.

3. Notice sent to the Respondent. In response to the notice, 3rd Respondent has submitted his counter and he submitted that the 3rd Respondent has paid total salary to agency. All casual workers have received their salaries from the agency except the Petitioner. The Petitioner has demanded salary amount of Rs.87,960/-,

which is not correct. The Petitioner has not worked 30 days in every month. He has worked excluding Saturdays, Sundays and holidays declared by Government.

4. Further, the Respondent No.4 has also submitted his counter and he submitted that all the allegations made in the present petition are neither true nor correct. It is submitted that the Respondent No.4 engaged 7 employees with Respondent No.3 on contract basis from 1.12.2004 to 1.2.2007. The contract was closed on 1.2.2007. It is submitted that the respondent organization was closed in the month of February 2007. Since that day no persons were with Respondent No.4. The Respondent No.4 paid entire wages to workers as per their work period. The Respondent No. 4 denies the allegation of the petitioner that he was not paid his wages from 1.12.2004 to 31.1.2007. It is submitted that there is not even single allegation or any compliant against Respondent No.4 during the employment of the present petitioner. The petitioner never made any complaint against Respondent No.4, either to any labour authority or to Respondents No.1 to 3 who are his immediate employers, now he cannot take such false and untenable plea that his wages were not paid from 1.12.2004 to 31.1.2007. The Respondent No.4 submitted that the present petition originally was filed against the Respondents No.1,2 and 3 and there is not even a single allegation against Respondent No.4 in petition.

5. In support of his petition, Petitioner has filed chief evidence affidavit of WW1 wherein he has support his averments made in his petition and also proved the documents which have been marked as Ex.W1 to W15 respectively.

6. Petitioner has also filed written arguments. No evidence is lead on behalf of the Respondent.

7. Heard the arguments. Perused the record.

8. The present petition has been filed by the Petitioner u/s . 33C(2) of the I.D. Act, 1947.

The provision of Sec.33C(2) provides that,

" (2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government; within a period not exceeding three months Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit."

Now, we proceed to examine whether any money or benefit is due to workman from the employer Respondent under any settlement or an award or under the provision of Chapter 4A.

9 Petitioner submitted that he was engaged by the Respondent no.3 orally on 11.10.98 and he performed the duties of cleaning, sweeping, gardening, certain miscellaneous works like supplying Coffee/Tea and water to the permanent an regular employees. The Petitioner continued as casual labour from 11.11.98 to 31.1.2007 but his services were terminated from 1.2.2007. Further it is submitted that while Petitioner was working as a casual labour in Respondent No.3 office, Respondent No.3 appointed M/s. Sri Krishna Employment Information and Services Agency w.e.f. 1.12.2004 as labour supply agency and engaged labour through the above agency. However, the Petitioner and another have also rendered their services upto 31.1.2007 directly. It is further submitted that Respondent No.3 failed to pay the salary/wages from 1.12.2004 to 31.1.2007 and arrears of difference of wages for the said period. The Petitioner approached the Respondent No.3 for payment of his salary and difference in wages every month. But the Respondent No.3 refused to pay the same on the ground that the Petitioner shall register his name through the labour supply agency mentioned herein above. It is submitted that Petitioner was in service of Respondent No.3 on 31.1.2007, hence he is entitled for difference in wages/salary for the period from 1.4.2004 to 31.1.2007. It is further submitted that during the period from 1.4.2004 to 30.11.2004 he entitled for arrears of Rs.50/- per day consequent upon the revised rate of wages as per proceedings of the Collector and District Magistrate, Kurnool which came into force w.e.f. 1.4.2004. The details of salary/wages including difference of wages, as worked out are annexed thereto. The Petitioner is entitled to Rs.87,960/- towards difference in wages for the said period.

10. The Petitioner has supported the averments of his petition in the chief evidence affidavit and he has proved the documents marked as Ex.W1 to W15.

11. As per counter filed by Respondent No.3 there is no specific denial that the Petitioner has not worked in the office of Respondent No.3 from 11.11.98 to 1.2.2007 as a casual labour. Therefore, it is admitted fact that the Petitioner had worked as a casual labour in the office of Respondent No.3 for the said period. Further, the claim of the Petitioner that from 1.12.2004 the Respondent No.3 has appointed M/s. Sri Krishna

Employment Information and Services Agency, as labour supply agency, and engaged labour through this agency is also not denied by Respondent No.3. As regard the payment of wages to the Petitioner by the Respondent No.3, for the period from 1.12.2004 to 1.2.2007. So far as, regarding the fact of engagement of the Petitioner as a casual labour in the Respondent office is concerned the Petitioner has filed the relevant documents Ex.W3 and W2 which goes to reveal that the Petitioner has had worked as a casual labour in the Respondent office of Respondent No.3 as well as oral evidence also submitted by Petitioner. Respondent No.3 submitted that he has paid the Petitioner's total salary to the agency and all casual workers have received their salaries from the agencies except the Petitioner. Therefore, Respondent No.3 has clearly admitted the fact that he has engaged the agency M/s. Sri Krishna Employment Information and Services Agency for engagement of casual labour and he has paid the salary to the agency. He has also admitted that all casual workers have received their salaries through the agency except the Petitioner. Respondent has engaged the contract labour agency w.e.f. 1.12.2004 and since then he has paid the wages to the agency regarding causal labour. No proof of payment of salaries/wages paid to Petitioner has been filed by the Respondent No.3. Respondent No.4 has also not paid wages to the Petitioner nor filed any document pertaining to payment of wages to Petitioner. Whereas Respondent No.4 in his counter he stated that Respondent No.4 paid entire wages in the month of February, 2007 itself at the time of closure of Respondent No.4. Further, Respondent No.4 contended that the Petitioner never made any complaint against Respondent No.4 either to any labour authority or Respondents No.1,2, & 3 who are his immediate employers. Now, he can not take such false plea that, he was not paid for the period from 1.12.2004 to 31.1.2007. Admittedly, Petitioner was engaged as daily wager duly since 1998. However, the Respondent No.3 claims that the payment of wages was made to the Petitioner through agency but no payment voucher or receipt has been filed by the Respondent No.3 or Respondent No.4 for payment of wages to the Petitioner for the said period. Therefore, for want of evidence of payment of wages to Petitioner since 1.12.2004 the claim of the Petitioner that his salary/wages for the period from 1.12.2004 is due and to be paid by the Respondent No.3 since he was in the direct employment of Respondent No.3 has been proved.

12. As per calculation submitted by the Petitioner he was engaged on the wages @ Rs.60/- per day, whereas it has not been disputed by the Respondent No.3. Therefore, the Petitioner is liable for the payment of wages @Rs.60/- per day for the period from 1.12.2004 to 31.1.2007.

13. Further, the Petitioner/ Applicant contended that he is eligible for the revised pay of salary/wages as he claims that as per the proceeding of the Collector and District Magistrate, Kurnool which came into effect w.e.f. 1.4.2004, he is eligible for revised pay from that period till his date of termination. In this regard, the Petitioner submits that during the period from 1.4.2004 to 30.11.2004 he is entitled for arrears of Rs.50/- per day consequent upon the revised rates of wages as per the proceeding of the Collector and District Magistrate, Kurnool which came into effect force from 1.4.2004. The details of the salary/wages including difference of wages as worked out are annexed thereto. Therefore, Petitioner is entitled to receive Rs.87,960/- towards difference in wages for the said period as well as the salary/wages. In support of his claim he has submitted annexure statement with his petition wherein the details of the wages paid, to be paid to the Petitioner from 1.12.2004 to 31.1.2007 is mentioned. As per the proceeding of the Collector and District Magistrate, Kurnool, rate of wages payable has been revised w.e.f. 1.4.2004 raising from the rate of wages of Rs.60/- to Rs.110/- and further the proceeding of the Collector and District Magistrate, Kurnool has revised the wages w.e.f. 1.4.2006 from Rs/110/- to Rs.124/- per day. The Petitioner has filed Ex.W1 which is a copy of proceeding of the Collector and District Magistrate, Kurnool dated 6.12.2006. The perusal of the said proceeding of the Collector reflects that it is applicable to the casual labour employed in the State Government establishment or the offices where as in the present matter, the Respondent No.3 is Central Government establishment. Therefore, this proceeding of the revised pay by the Collector and District Magistrate, Kurnool is not applicable to the Respondent No.3 office. Apart from it, the Petitioner has not submitted any other notification or circular of appropriate government as mentioned under Sec.33C(2) applicable to casual labour engaged for revised wages. Therefore, in the absence of any notification from appropriate Government the claim of the Petitioner that he is eligible to receive the revised wages as he has claimed is not acceptable.

14. In this context, the decision of the Hon'ble Apex Court in the case of **M/s. Bombay Chemical Industries Vs. Deputy Labour Commissioner, Civil Appeal No.813/2022, dated 4.2.2022 is relevant, wherein the Hon'ble Apex Court** have held, " *as per the settled proposition of law, in an application under Sed.33C(2) of the I.D. Act, 1947, the Labour Court has no jurisdiction and cannot adjudicate dispute of entitlement or the basis of claim of workmen. It can only interpret the award or settlement which the claim is based.*

15. Further it is held that in the case of **Ganesh Razak and another**, "the *Labour Court's jurisdiction under Sec.33C(2) is like that of an executing Court. As per the settled proposition of law without prior adjudication or recognition of the disputed claim of the workmen, proceedings for computation of the arrears*

of wages and/or difference of wages claimed by the workmen shall not be maintainable under section 33C(2) of the Industrial Disputes Act, 1947..

16. It is admitted fact that since Respondent No.3 has engaged the contract labour agency, M/s. Sri Krishna Employment Information and Services Agency w.e.f. 1.4.2004 and wages @Rs.60/- per day has not been paid to the Petitioner from 1.4.2004 upto the date of his termination w.e.f. 1.2.2007. Therefore, Petitioner is liable to receive the wage amount @ Rs.60/- per day for the period from 1.4.2004 to 1.2.2007. The petition is liable to be allowed partly.

ORDER

Therefore, in view of the discussion as above, the Petitioner's application u/s 33C(2) of I.D. Act, 1947 is partly allowed. Therefore, the application for arrears of wages is allowed and the Petitioner is liable for the payment of wages @Rs.60/- per day, for the period from 1.12.2004 to 31.1.2007 for the number of days he has worked excluding non working days, like, public holidays, Saturdays and Sundays from Respondent No.3. The claim for revised pay is rejected. The said wages amount shall be paid by Respondent No.3 to the Petitioner within 4 months from the date of receipt of this order.

Ordered accordingly.

Dictated to Smt P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 20th day of April, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri P. Vanamanna	NIL

Documents marked for the Petitioner

Ex.W1: Photocopy of proceedings No.D.Dis/1029/2006, of the District Collector, Kurnool dated 16.12.2006

Ex.W2: Photocopy of proceedings No.D.Dis(C.3) 1062/M/2004 of the District Collector, Kurnool dated 7.5.2005

Ex.W3: Photocopy of Status Quo orders dt. 16.12.2004 from Hon'ble Central Administrative Tribunal, Hyderabad

Ex.W4: Photocopy of interim orders dt. 1.8.2005 in WPMP No.21154 of 2005 in WP No.16637

Ex.W5: Photocopy of opinion of Rajasekhar Reddy, Asst. Solicitor Gen. of India, Hon'ble High Court, Hyderabad dt.2.11.2005

Ex.W6: Photocopy of lr. Dt. 30.11.2005 form R3 to R2

Ex.W7: Photocopy of representation of WW1 and ors. Dt. 10.10.2006 to R1

Ex.W8: Photocopy of lr. Dt.23.11.2006 from R2 to R3

Ex.W9: Photocopy of representation of WW1 & ors dt.23.11.2005 to R3

Ex.W10: Photocopy of lr. Dt. 24.11.2005 from R3 to R4

Ex.W11: Photocopy of lr. Dt. 2.12.2005 from R4 to R3.

Ex.W12: Photocopy of proceedings dt.23.8.2006 from R3 to R2

Ex.W13: Photocopy of representation dt. 18.11.2006 from WW1 & ors to RLCC, Hyderabad

Ex.W14: Photocopy of representation dt. 1.2.2007 from WW1 & ors to RLCC, Hyderabad

Ex.W15: Payment voucher dt. 16.2.2000 with contingent bill dt. 16.2.2000 in original.

Documents marked for the Respondent

NIL

नई दिल्ली, 26 मई, 2023

का.आ. 891.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मुख्य आयुक्त, सीमा शुल्क और केंद्रीय उत्पाद शुल्क,विजाग जोन, विशाखापत्तनम; आयुक्त,सीमा शुल्क और केंद्रीय उत्पाद शुल्क, तिरुपति आयुक्तालय; तिरुपति;सहायक आयुक्त, सीमा शुल्क और केंद्रीय उत्पाद शुल्क, मंडल कार्यालय, कुरनूल मंडल, कुरनूल; मालिक श्री बी.वी. रमना, श्रीकृष्ण रोजगार सूचना और सेवाएं, नेहरू नगर, कुरनूल, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री पी. नागराजू, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-हैदराबाद के पंचाट (संदर्भ संख्या M.P. No. 5/2007) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 17.05.2023 को प्राप्त हुआ था।

[सं. एल-42025-07-2023-109-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 26th May, 2023

S.O. 891.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. M.P. No. 5/2007) of the Central Government Industrial Tribunal cum Labour Court – Hyderabad as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief Commissioner, Customs and Central Excise, Vizag Zone, Visakhapatnam ;The Commissioner, Customs and Central Excise, Tirupati Commissionerate; Tirupathi; The Assistant Commissioner, Customs and Central Excise, Divisional Office, Kurnool Division, Kurnool; Proprietor Shri B.V. Ramana, M/s. Shri Krishna Employment Information and Services, Nehru Nagar,Kurnool, and Shri P. Nagaraju, Worker, which was received along with soft copy of the award by the Central Government on 17.05.2023.

[No. L-42025-07-2023-109 -IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM -LABOUR COURT, HYDERABAD

Present: - Shri IRFAN QAMAR, Presiding Officer

Dated the 20th day of April, 2023

M.P. No. 5/2007

Between:

Sri P. Nagaraju,

S/o P. Devanna,
H.No.40/706, Dharmapeta,
Kurnool – 518004. …..Petitioner

And

1. The Chief Commissioner,
   Customs and Central Excise,
   Vizag Zone, Visakhapatnam.

2. The Commissioner,
   Customs and Central Excise,
   Tirupati Commissionerate,
   9-86-A, West Church Compound,
   M.R. Palle Road, Tirupathi-517502.

3. The Assistant Commissioner,
Customs and Central Excise,
Divisional Office, Kurnool Division,
Near Children's Park, N.R. Peta,
Kurnool – 518 004.

4. M/s. Sri Krishna Employment
Information and Services,
No.40-790-2, Nehru Nagar,
Kurnool – 518 004, rep. by its
Proprietor Shri B.V. Ramana. …..Respondents

Appearance:

For the Petitioner : Sri William Burra, Advocate
For the Respondent : Sri Kapu Ramakrishna Reddy, Advocate for R1, R2 & R3
Sri M.V.L.Narasaiah, Advocate for R4

ORDER

This petition has been filed by Sri P. Nagaraju under Sec.33 C(2) of the Industrial Disputes Act, 1947 for payment of the amount wage due to Petitioner from Respondent and arrear of revised wages as well as to direct the Respondents to pay the dues with interest @12% p.a.

2. The brief facts of the application are that the Petitioner was engaged by the Respondent No.3 orally on 15.7.1998. The duties performed by him in Respondent's office were "cleaning, sweeping, gardening and certain miscellaneous works like supplying Coffee/Tea or water to the permanent and regular employees." The Petitioner continued to be engaged as Casual Labour from 15.7..98 to 31.1.2007. The services of the Petitioner were orally terminated by Respondent No.3 w.e.f. 01.02.2007. The said oral termination of Petitioner was illegal, unjust, contrary to the Provisions of the I.D. Act, 1947 and also against the Principles of natural justice. A separate application u/s 2A(2) of the I.D.Act, 1947 has been submitted challenging the illegal termination. The Petitioner submits that while he was working as Casual Labour in the 3rd Respondent Office, he engaged M/s. Sree Krishna Employment Information and Services, Kurnool w.e.f. 01.12.2004 as Labour Supply Agency and engaged labour through the above Agency. However, the Petitioner continued to render his services upto 31.1.2007 as direct labour. The 3rd Respondent however failed to pay the salary/wages from 01.12.2004 to 31.01.2007 and also arrears of difference in wages from 01.4.2004 to 30.11.2004. The Petitioner approached the 3rd Respondent for payment of his salary/ wage and difference in wages every month, but the 3rd Respondent refused to pay the same on the ground that the Petitioner should register his name through the labour supply agency. The Petitioner therefore approached the CAT, Hyderabad and thereafter the High Court of Andhra Pradesh, Hyderabad and obtained interim stay, thereby the Respondents were directed to maintain status quo. The Petitioner submits that he was in the service of the 3rd Respondent upto 31.1.2007 and hence he is entitled for difference in wages and salary for the period from 1.4.2004 to 31.1.2007. The Petitioner further submits that during the period from 1.4.2004 to 30.11.2004, he is entitled for arrears of Rs. 50/- per day consequent upon the revised rates of wages as per the Proceedings of the Collector and District Magistrate, Kurnool which came into force w.e.f. 1.4.2004. The Petitioner is entitled to towards difference in wages of Rs.87,960/-, and Wages/ Salary from 1.4.2004 to 31.1.2007. It is also submitted that Sri A. Rajasekhara Reddy, Asst. Solicitor General of India, High Court of A.P. at Hyderabad has also given his opinion to the 1st Respondent to pay the wages as per the interim orders of the Hon'ble High Court of A.P., Hyderabad. But the Respondent did not pay the wages till date in gross violation of the provisions of law.

3. Notice sent to the Respondent. In response to the notice, 3rd Respondent has submitted his counter and he submitted that the 3rd Respondent has paid total salary to agency. All casual workers have received their salaries from the agency except the Petitioner. The Petitioner has demanded salary amount of Rs.87,960/-, which is not correct. The Petitioner has not worked 30 days in every month. He has worked excluding Saturdays, Sundays and holidays declared by Government.

4. Further, the Respondent No.4 has also submitted his counter and he submitted that all the allegations made in the present petition are neither true nor correct. It is submitted that the Respondent No.4 engaged 7 employees with Respondent No.3 on contract basis from 1.12.2004 to 1.2.2007. The contract was closed on 1.2.2007. It is submitted that the respondent organization was closed in the month of February 2007. Since that day no persons were with Respondent No.4. The Respondent No.4 paid entire wages to workers as per their work period. The Respondent No. 4 denies the allegation of the petitioner that he was not paid his wages

from 1.12.2004 to 31.1.2007. It is submitted that there is not even single allegation or any compliant against Respondent No.4 during the employment of the present petitioner. The petitioner never made any complaint against Respondent No.4, either to any labour authority or to Respondents No.1 to 3 who are his immediate employers, now he cannot take such false and untenable plea that his wages were not paid from 1.12.2004 to 31.1.2007. The Respondent No.4 submitted that the present petition originally was filed against the Respondents No.1,2 and 3 and there is not even a single allegation against Respondent No.4 in petition.

5. In support of his petition, Petitioner has filed chief evidence affidavit of WW1 wherein he has support his averments made in his petition and also proved the documents which have been marked as Ex.W1 to W15 respectively.

6. Petitioner has also filed written arguments. No evidence is lead on behalf of the Respondent.

7. Heard the arguments. Perused the record.

8. The present petition has been filed by the Petitioner u/s . 33C(2) of the I.D. Act, 1947.

The provision of Sec.33C(2) provides that,

" (2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government; within a period not exceeding three months Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit."

Now, we proceed to examine whether any money or benefit is due to workman from the employer Respondent under any settlement or an award or under the provision of Chapter 4A.

9 Petitioner submitted that he was engaged by the Respondent No.3 orally on 15.7.98 and he performed the duties of cleaning, sweeping, gardening, certain miscellaneous works like supplying Coffee/Tea and water to the permanent an regular employees. The Petitioner continued as casual labour from 15.7.98 to 31.1.2007 but his services were terminated from 1.2.2007. Further it is submitted that while Petitioner was working as a casual labour in Respondent No.3 office, Respondent No.3 appointed M/s. Sri Krishna Employment Information and Services Agency w.e.f. 1.12.2004 as labour supply agency and engaged labour through the above agency. However, the Petitioner and another have also rendered their services upto 31.1.2007 directly. It is further submitted that Respondent No.3 failed to pay the salary/wages from 1.12.2004 to 31.1.2007 and arrears of difference of wages for the said period. The Petitioner approached the Respondent No.3 for payment of his salary and difference in wages every month. But the Respondent No.3 refused to pay the same on the ground that the Petitioner shall register his name through the labour supply agency mentioned herein above. It is submitted that Petitioner was in service of Respondent No.3 on 31.1.2007, hence he is entitled for difference in wages/salary for the period from 1.4.2004 to 31.1.2007. It is further submitted that during the period from 1.4.2004 to 30.11.2004 he entitled for arrears of Rs.50/- per day consequent upon the revised rate of wages as per proceedings of the Collector and District Magistrate, Kurnool which came into force w.e.f. 1.4.2004. The details of salary/wages including difference of wages, as worked out are annexed thereto. The Petitioner is entitled to Rs.87,960/- towards difference in wages for the said period.

10. The Petitioner has supported the averments of his petition in the chief evidence affidavit and he has proved the documents marked as Ex.W1 to W15.

11. As per counter filed by Respondent No.3 there is no specific denial that the Petitioner has not worked in the office of Respondent No.3 from 15.7.98 to 1.2.2007 as a casual labour. Therefore, it is admitted fact that the Petitioner had worked as a casual labour in the office of Respondent No.3 for the said period. Further, the claim of the Petitioner that from 1.12.2004 the Respondent No.3 has appointed M/s. Sri Krishna Employment Information and Services Agency, as labour supply agency, and engaged labour through this agency is also not denied by Respondent No.3. As regard the payment of wages to the Petitioner by the Respondent No.3, for the period from 1.12.2004 to 1.2.2007. So far as, regarding the fact of engagement of the Petitioner as a casual labour in the Respondent office is concerned the Petitioner has filed the relevant documents Ex.W3 and W2 which goes to reveal that the Petitioner has had worked as a casual labour in the Respondent office of Respondent No.3 as well as oral evidence also submitted by Petitioner. Respondent No.3 submitted that he has paid the Petitioner's total salary to the agency and all casual workers have received their salaries from the agencies except the Petitioner. Therefore, Respondent No.3 has clearly admitted the fact that he has engaged the agency M/s. Sri Krishna Employment Information and Services Agency for engagement of

casual labour and he has paid the salary to the agency. He has also admitted that all casual workers have received their salaries through the agency except the Petitioner. Respondent has engaged the contract labour agency w.e.f. 1.12.2004 and since then he has paid the wages to the agency regarding causal labour. No proof of payment of salaries/wages paid to Petitioner has been filed by the Respondent No.3. Respondent No.4 has also not paid wages to the Petitioner nor filed any document pertaining to payment of wages to Petitioner. Whereas Respondent No.4 in his counter he stated that Respondent No.4 paid entire wages in the month of February, 2007 itself at the time of closure of Respondent No.4. Further, Respondent No.4 contended that the Petitioner never made any complaint against Respondent No.4 either to any labour authority or Respondents No.1,2, & 3 who are his immediate employers. Now, he can not take such false plea that, he was not paid for the period from 1.12.2004 to 31.1.2007. Admittedly, Petitioner was engaged as daily wager duly since 1998. However, the Respondent No.3 claims that the payment of wages was made to the Petitioner through agency but no payment voucher or receipt has been filed by the Respondent No.3 or Respondent No.4 for payment of wages to the Petitioner for the said period. Therefore, for want of evidence of payment of wages to Petitioner since 1.12.2004 the claim of the Petitioner that his salary/wages for the period from 1.12.2004 is due and to be paid by the Respondent No.3 since he was in the direct employment of Respondent No.3 has been proved.

12. As per calculation submitted by the Petitioner he was engaged on the wages @ Rs.60/- per day, whereas it has not been disputed by the Respondent No.3. Therefore, the Petitioner is liable for the payment of wages @Rs.60/- per day for the period from 1.12.2004 to 31.1.2007.

13. Further, the Petitioner/ Applicant contended that he is eligible for the revised pay of salary/wages as he claims that as per the proceeding of the Collector and District Magistrate, Kurnool which came into effect w.e.f. 1.4.2004, he is eligible for revised pay from that period till his date of termination. In this regard, the Petitioner submits that during the period from 1.4.2004 to 30.11.2004 he is entitled for arrears of Rs.50/- per day consequent upon the revised rates of wages as per the proceeding of the Collector and District Magistrate, Kurnool which came into effect force from 1.4.2004. The details of the salary/wages including difference of wages as worked out are annexed thereto. Therefore, Petitioner is entitled to receive Rs.87,960/- towards difference in wages for the said period as well as the salary/wages. In support of his claim he has submitted annexure statement with his petition wherein the details of the wages paid, to be paid to the Petitioner from 1.12.2004 to 31.1.2007 is mentioned. As per the proceeding of the Collector and District Magistrate, Kurnool, rate of wages payable has been revised w.e.f. 1.4.2004 raising from the rate of wages of Rs.60/- to Rs.110/- and further the proceeding of the Collector and District Magistrate, Kurnool has revised the wages w.e.f. 1.4.2006 from Rs/110/- to Rs.124/- per day. The Petitioner has filed Ex.W1 which is a copy of proceeding of the Collector and District Magistrate, Kurnool dated 6.12.2006. The perusal of the said proceeding of the Collector reflects that it is applicable to the casual labour employed in the State Government establishment or the offices where as in the present matter, the Respondent No.3 is Central Government establishment. Therefore, this proceeding of the revised pay by the Collector and District Magistrate, Kurnool is not applicable to the Respondent No.3 office. Apart from it, the Petitioner has not submitted any other notification or circular of appropriate government as mentioned under Sec.33C(2) applicable to casual labour engaged for revised wages. Therefore, in the absence of any notification from appropriate Government the claim of the Petitioner that he is eligible to receive the revised wages as he has claimed is not acceptable.

14. In this context, the decision of the Hon'ble Apex Court in the case of **M/s. Bombay Chemical Industries Vs. Deputy Labour Commissioner, Civil Appeal No.813/2022, dated 4.2.2022 is relevant, wherein the Hon'ble Apex Court** have held, " *as per the settled proposition of law, in an application under Sed.33C(2) of the I.D. Act, 1947, the Labour Court has no jurisdiction and cannot adjudicate dispute of entitlement or the basis of claim of workmen. It can only interpret the award or settlement which the claim is based.*

15. Further it is held that in the case of **Ganesh Razak and another**, "the *Labour Court's jurisdiction under Sec.33C(2) is like that of an executing Court. As per the settled proposition of law without prior adjudication or recognition of the disputed claim of the workmen, proceedings for computation of the arrears of wages and/or difference of wages claimed by the workmen shall not be maintainable under section 33C(2) of the Industrial Disputes Act, 1947.*

16. It is admitted fact that since Respondent No.3 has engaged the contract labour agency, M/s. Sri Krishna Employment Information and Services Agency w.e.f. 1.4.2004 and wages @Rs.60/- per day has not been paid to the Petitioner from 1.4.2004 upto the date of his termination w.e.f. 1.2.2007. Therefore, Petitioner is liable to receive the wage amount @ Rs.60/- per day for the period from 1.4.2004 to 1.2.2007. The petition is liable to be allowed partly.

ORDER

Therefore, in view of the discussion as above, the Petitioner's application u/s 33C(2) of I.D. Act, 1947 is partly allowed. Therefore, the application for arrears of wages is allowed and the Petitioner is liable for the payment of wages @Rs.60/- per day, for the period from 1.12.2004 to 31.1.2007 for the number of days he has worked excluding non working days, like, public holidays, Saturdays and Sundays from Respondent No.3. The claim for revised pay is rejected. The said wages amount shall be paid by Respondent No.3 to the Petitioner within 4 months from the date of receipt of this order.

Ordered accordingly.

Dictated to Smt P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 20th day of April, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri P. Nagaraju	NIL

Documents marked for the Petitioner

Ex.W1: Photocopy of proceedings No.D.Dis/1029/2006, of the District Collector, Kurnool dated 16.12.2006

Ex.W2: Photocopy of proceedings No.D.Dis(C.3) 1062/M/2004 of the District Collector, Kurnool dated 7.5.2005

Ex.W3: Photocopy of Status Quo orders dt. 16.12.2004 from Hon'ble Central Administrative Tribunal, Hyderabad

Ex.W4: Photocopy of interim orders dt. 1.8.2005 in WPMP No.21154 of 2005 in WP No.16637

Ex.W5: Photocopy of opinion of Rajasekhar Reddy, Asst. Solicitor Gen. of India, Hon'ble High Court, Hyderabad dt.2.11.2005

Ex.W6: Photocopy of lr. Dt. 30.11.2005 form R3 to R2

Ex.W7: Photocopy of representation of WW1 and ors. Dt. 10.10.2006 to R1

Ex.W8: Photocopy of lr. Dt.23.11.2006 from R2 to R3

Ex.W9: Photocopy of representation of WW1 & ors dt.23.11.2005 to R3

Ex.W10: Photocopy of lr. Dt. 24.11.2005 from R3 to R4

Ex.W11: Photocopy of lr. Dt. 2.12.2005 from R4 to R3.

Ex.W12: Photocopy of proceedings dt.23.8.2006 from R3 to R2

Ex.W13: Photocopy of representation dt. 18.11.2006 from WW1 & ors to RLCC, Hyderabad

Ex.W14: Photocopy of representation dt. 1.2.2007 from WW1 & ors to RLCC, Hyderabad

Ex.W15: Payment voucher dt. 16.2.2000 with contingent bill dt. 16.2.2000 in original.

Documents marked for the Respondent

NIL

नई दिल्ली, 26 मई, 2023

का.आ. 892.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मुख्य आयुक्त, सीमा शुल्क और केंद्रीय उत्पाद शुल्क,विजाग जोन, विशाखापत्तनम; आयुक्त,सीमा शुल्क और केंद्रीय उत्पाद शुल्क, तिरुपति आयुक्तालय; तिरुपति; सहायक आयुक्त, सीमा शुल्क और केंद्रीय उत्पाद शुल्क, मंडल

कार्यालय, कुरनूल मंडल, कुरनूल; मालिक श्री बी.वी. रमना, श्रीकृष्ण रोजगार सूचना और सेवाएं, नेहरू नगर, कुरनूल, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री पी. श्रीनिवासुलु, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-हैदराबाद के पंचाट (संदर्भ संख्या M.P. No. 6/2007) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 17.05.2023 को प्राप्त हुआ था।

[सं. एल-42025-07-2023-110-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 26th May, 2023

S.O. 892.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. M.P. No. 6/2007) of the Central Government Industrial Tribunal cum Labour Court – Hyderabad as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief Commissioner, Customs and Central Excise, Vizag Zone, Visakhapatnam ;The Commissioner, Customs and Central Excise, Tirupati Commissionerate; Tirupathi; The Assistant Commissioner,Customs and Central Excise, Divisional Office, Kurnool Division, Kurnool; Proprietor Shri B.V. Ramana, M/s. Shri Krishna Employment Information and Services, Nehru Nagar,Kurnool, and Shri P. Srinivasulu, Worker, which was received along with soft copy of the award by the Central Government on 17.05.2023.

[No. L- 42025-07-2023-110-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM- LABOUR COURT, HYDERABAD

Present: - Shri IRFAN QAMAR, Presiding Officer

Dated the 20th day of April, 2023

M.P. No. 6/2007

Between:

Sri P. Srinivasulu,
S/o P. Basavaiah,
C/o Sri P. Pulla Rao garu,
Principal,
Ravindra Junior College,
Abbas Nagar,
Kurnool – 518004. …..Petitioner

AND

1. The Chief Commissioner,
   Customs and Central Excise,
   Vizag Zone, Visakhapatnam.
2. The Commissioner,
   Customs and Central Excise,
   Tirupati Commissionerate,
   9-86-A, West Church Compound,
   M.R. Palle Road, Tirupathi-517502.
3. The Assistant Commissioner,
   Customs and Central Excise,
   Divisional Office, Kurnool Division,
   Near Children's Park, N.R. Peta,
   Kurnool – 518 004.

4. M/s. Sri Krishna Employment
Information and Services,
No.40-790-2, Nehru Nagar,
Kurnool – 518 004, rep. by its
Proprietor Shri B.V. Ramana. ….Respondents

Appearance:

For the Petitioner : Sri William Burra, Advocate
For the Respondent Sri Kapu Ramakrishna Reddy, Advocate for R1, R2 & R3
Sri M.V.L.Narasaiah, Advocate for R4

ORDER

This petition has been filed by Sri P. Srinivasulu under Sec.33 C(2) of the Industrial Disputes Act, 1947 for payment of the amount wage due to Petitioner from Respondent and arrear of revised wages as well as to direct the Respondents to pay the dues with interest @12% p.a.

2. The brief facts of the application are that the Petitioner was engaged by the Respondent No.3 orally on 1.11.1999. The duties performed by him in Respondent's office were "cleaning, sweeping, gardening and certain miscellaneous works like supplying Coffee/Tea or water to the permanent and regular employees." The Petitioner continued to be engaged as Casual Labour from 1.11.1999 to 31.1.2007. The services of the Petitioner were orally terminated by Respondent No.3 w.e.f. 01.02.2007. The said oral termination of Petitioner was illegal, unjust, contrary to the Provisions of the I.D.Act, 1947 and also against the Principles of natural justice. A separate application u/s 2A(2) of the I.D.Act, 1947 has been submitted challenging the illegal termination. The Petitioner submits that while he was working as Casual Labour in the 3rd Respondent Office, he engaged M/s. Sree Krishna Employment Information and Services, Kurnool w.e.f. 01.12.2004 as Labour Supply Agency and engaged labour through the above Agency. However, the Petitioner continued to render his services upto 31.1.2007 as direct labour. The 3rd Respondent however failed to pay the salary/wages from 01.12.2004 to 31.01.2007 and also arrears of difference in wages from 01.4.2004 to 30.11.2004. The Petitioner approached the 3rd Respondent for payment of his salary/ wage and difference in wages every month, but the 3rd Respondent refused to pay the same on the ground that the Petitioner should register his name through the labour supply agency. The Petitioner therefore approached the CAT, Hyderabad and thereafter the High Court of Andhra Pradesh, Hyderabad and obtained interim stay, thereby the Respondents were directed to maintain status quo. The Petitioner submits that he was in the service of the 3rd Respondent upto 31.1.2007 and hence he is entitled for difference in wages and salary for the period from 1.4.2004 to 31.1.2007. The Petitioner further submits that during the period from 1.4.2004 to 30.11.2004, he is entitled for arrears of Rs. 50/- per day consequent upon the revised rates of wages as per the Proceedings of the Collector and District Magistrate, Kurnool which came into force w.e.f. 1.4.2004. The Petitioner is entitled to towards difference in wages of Rs.87,960/-, and Wages/ Salary from 1.4.2004 to 31.1.2007. It is also submitted that Sri A. Rajasekhara Reddy, Asst. Solicitor General of India, High Court of A.P. at Hyderabad has also given his opinion to the 1st Respondent to pay the wages as per the interim orders of the Hon'ble High Court of A.P., Hyderabad. But the Respondent did not pay the wages till date in gross violation of the provisions of law.

3. Notice sent to the Respondent. In response to the notice, 3rd Respondent has submitted his counter and he submitted that the 3rd Respondent has paid total salary to agency. All casual workers have received their salaries from the agency except the Petitioner. The Petitioner has demanded salary amount of Rs.87,960/-, which is not correct. The Petitioner has not worked 30 days in every month. He has worked excluding Saturdays, Sundays and holidays declared by Government.

4. Further, the Respondent No.4 has also submitted his counter and he submitted that all the allegations made in the present petition are neither true nor correct. It is submitted that the Respondent No.4 engaged 7 employees with Respondent No.3 on contract basis from 1.12.2004 to 1.2.2007. The contract was closed on 1.2.2007. It is submitted that the respondent organization was closed in the month of February 2007. Since that day no persons were with Respondent No.4. The Respondent No.4 paid entire wages to workers as per their work period. The Respondent No. 4 denies the allegation of the petitioner that he was not paid his wages from 1.12.2004 to 31.1.2007. It is submitted that there is not even single allegation or any compliant against Respondent No.4 during the employment of the present petitioner. The petitioner never made any complaint against Respondent No.4, either to any labour authority or to Respondents No.1 to 3 who are his immediate employers, now he cannot take such false and untenable plea that his wages were not paid from 1.12.2004 to 31.1.2007. The Respondent No.4 submitted that the present petition originally was filed against the Respondents No.1,2 and 3 and there is not even a single allegation against Respondent No.4 in petition.

5. In support of his petition, Petitioner has filed chief evidence affidavit of WW1 wherein he has support his averments made in his petition and also proved the documents which have been marked as Ex.W1 to W15 respectively.

6. Petitioner has also filed written arguments. No evidence is lead on behalf of the Respondent.

7. Heard the arguments. Perused the record.

8. The present petition has been filed by the Petitioner u/s . 33C(2) of the I.D. Act, 1947.

The provision of Sec.33C(2) provides that,

" (2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government; within a period not exceeding three months Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit."

Now, we proceed to examine whether any money or benefit is due to workman from the employer Respondent under any settlement or an award or under the provision of Chapter 4A.

9 Petitioner submitted that he was engaged by the Respondent no.3 orally on 1.11.1999 and he performed the duties of cleaning, sweeping, gardening, certain miscellaneous works like supplying Coffee/Tea and water to the permanent an regular employees. The Petitioner continued as casual labour from 1.11.1999 to 31.1.2007 but his services were terminated from 1.2.2007. Further, it is submitted that while Petitioner was working as a casual labour in Respondent No.3 office, Respondent No.3 appointed M/s. Sri Krishna Employment Information and Services Agency w.e.f. 1.12.2004 as labour supply agency and engaged labour through the above agency. However, the Petitioner and another have also rendered their services upto 31.1.2007 directly. It is further submitted that Respondent No.3 failed to pay the salary/wages from 1.12.2004 to 31.1.2007 and arrears of difference of wages for the said period. The Petitioner approached the Respondent No.3 for payment of his salary and difference in wages every month. But the Respondent No.3 refused to pay the same on the ground that the Petitioner shall register his name through the labour supply agency mentioned herein above. It is submitted that Petitioner was in service of Respondent No.3 on 31.1.2007, hence he is entitled for difference in wages/salary for the period from 1.4.2004 to 31.1.2007. It is further submitted that during the period from 1.4.2004 to 30.11.2004 he entitled for arrears of Rs.50/- per day consequent upon the revised rate of wages as per proceedings of the Collector and District Magistrate, Kurnool which came into force w.e.f. 1.4.2004. The details of salary/wages including difference of wages, as worked out are annexed thereto. The Petitioner is entitled to Rs.87,960/- towards difference in wages for the said period.

10. The Petitioner has supported the averments of his petition in the chief evidence affidavit and he has proved the documents marked as Ex.W1 to W15.

11. As per counter filed by Respondent No.3 there is no specific denial that the Petitioner has not worked in the office of Respondent No.3 from 1.11.1999 to 1.2.2007 as a casual labour. Therefore, it is admitted fact that the Petitioner had worked as a casual labour in the office of Respondent No.3 for the said period. Further, the claim of the Petitioner that from 1.12.2004 the Respondent No.3 has appointed M/s. Sri Krishna Employment Information and Services Agency, as labour supply agency, and engaged labour through this agency is also not denied by Respondent No.3. As regard the payment of wages to the Petitioner by the Respondent No.3, for the period from 1.12.2004 to 1.2.2007. So far as, regarding the fact of engagement of the Petitioner as a casual labour in the Respondent office is concerned the Petitioner has filed the relevant documents Ex.W5 and W2 which goes to reveal that the Petitioner has had worked as a casual labour in the Respondent office of Respondent No.3 as well as oral evidence also submitted by Petitioner. Respondent No.3 submitted that he has paid the Petitioner's total salary to the agency and all casual workers have received their salaries from the agencies except the Petitioner. Therefore, Respondent No.3 has clearly admitted the fact that he has engaged the agency M/s. Sri Krishna Employment Information and Services Agency for engagement of casual labour and he has paid the salary to the agency. He has also admitted that all casual workers have received their salaries through the agency except the Petitioner. Respondent has engaged the contract labour agency w.e.f. 1.12.2004 and since then he has paid the wages to the agency regarding causal labour. No proof of payment of salaries/wages paid to Petitioner has been filed by the Respondent No.3. Respondent No.4 has also not paid wages to the Petitioner nor filed any document pertaining to payment of wages to Petitioner. Whereas Respondent No.4 in his counter he stated that Respondent No.4 paid entire wages in the month of February, 2007 itself at the time of closure of Respondent No.4. Further, Respondent No.4 contended that the

Petitioner never made any complaint against Respondent No.4 either to any labour authority or Respondents No.1,2, & 3 who are his immediate employers. Now, he can not take such false plea that, he was not paid for the period from 1.12.2004 to 31.1.2007. Admittedly, Petitioner was engaged as daily wager duly since 1999. However, the Respondent No.3 claims that the payment of wages was made to the Petitioner through agency but no payment voucher or receipt has been filed by the Respondent No.3 or Respondent No.4 for payment of wages to the Petitioner for the said period. Therefore, for want of evidence of payment of wages to Petitioner since 1.12.2004 the claim of the Petitioner that his salary/wages for the period from 1.12.2004 is due and to be paid by the Respondent No.3 since he was in the direct employment of Respondent No.3 has been proved.

12. As per calculation submitted by the Petitioner he was engaged on the wages @ Rs.60/- per day, whereas it has not been disputed by the Respondent No.3. Therefore, the Petitioner is liable for the payment of wages @Rs.60/- per day for the period from 1.12.2004 to 31.1.2007.

13. Further, the Petitioner/ Applicant contended that he is eligible for the revised pay of salary/wages as he claims that as per the proceeding of the Collector and District Magistrate, Kurnool which came into effect w.e.f. 1.4.2004, he is eligible for revised pay from that period till his date of termination. In this regard, the Petitioner submits that during the period from 1.4.2004 to 30.11.2004 he is entitled for arrears of Rs.50/- per day consequent upon the revised rates of wages as per the proceeding of the Collector and District Magistrate, Kurnool which came into effect force from 1.4.2004. The details of the salary/wages including difference of wages as worked out are annexed thereto. Therefore, Petitioner is entitled to receive Rs.87,960/- towards difference in wages for the said period as well as the salary/wages. In support of his claim he has submitted annexure statement with his petition wherein the details of the wages paid, to be paid to the Petitioner from 1.12.2004 to 31.1.2007 is mentioned. As per the proceeding of the Collector and District Magistrate, Kurnool, rate of wages payable has been revised w.e.f. 1.4.2004 raising from the rate of wages of Rs.60/- to Rs.110/- and further the proceeding of the Collector and District Magistrate, Kurnool has revised the wages w.e.f. 1.4.2006 from Rs/110/- to Rs.124/- per day. The Petitioner has filed Ex.W1 which is a copy of proceeding of the Collector and District Magistrate, Kurnool dated 6.12.2006. The perusal of the said proceeding of the Collector reflects that it is applicable to the casual labour employed in the State Government establishment or the offices where as in the present matter, the Respondent No.3 is Central Government establishment. Therefore, this proceeding of the revised pay by the Collector and District Magistrate, Kurnool is not applicable to the Respondent No.3 office. Apart from it, the Petitioner has not submitted any other notification or circular of appropriate government as mentioned under Sec.33C(2) applicable to casual labour engaged for revised wages. Therefore, in the absence of any notification from appropriate Government the claim of the Petitioner that he is eligible to receive the revised wages as he has claimed is not acceptable.

14. In this context, the decision of the Hon'ble Apex Court in the case of **M/s. Bombay Chemical Industries Vs. Deputy Labour Commissioner, Civil Appeal No.813/2022, dated 4.2.2022 is relevant, wherein the Hon'ble Apex Court** have held, " *as per the settled proposition of law, in an application under Sed.33C(2) of the I.D. Act, 1947, the Labour Court has no jurisdiction and cannot adjudicate dispute of entitlement or the basis of claim of workmen. It can only interpret the award or settlement which the claim is based.*

15. Further it is held that in the case of **Ganesh Razak and another**, "the *Labour Court's jurisdiction under Sec.33C(2) is like that of an executing Court. As per the settled proposition of law without prior adjudication or recognition of the disputed claim of the workmen, proceedings for computation of the arrears of wages and/or difference of wages claimed by the workmen shall not be maintainable under section 33C(2) of the Industrial Disputes Act, 1947.*.

16. It is admitted fact that since Respondent No.3 has engaged the contract labour agency, M/s. Sri Krishna Employment Information and Services Agency w.e.f. 1.4.2004 and wages @Rs.60/- per day has not been paid to the Petitioner from 1.4.2004 upto the date of his termination w.e.f. 1.2.2007. Therefore, Petitioner is liable to receive the wage amount @ Rs.60/- per day for the period from 1.4.2004 to 1.2.2007. The petition is liable to be allowed partly.

ORDER

Therefore, in view of the discussion as above, the Petitioner's application u/s 33C(2) of I.D. Act, 1947 is partly allowed. Therefore, the application for arrears of wages is allowed and the Petitioner is liable for the payment of wages @Rs.60/- per day, for the period from 1.12.2004 to 31.1.2007 for the number of days he has worked excluding non working days, like, public holidays, Saturdays and Sundays from Respondent No.3. The claim for revised pay is rejected. The said wages amount shall be paid by Respondent No.3 to the Petitioner within 4 months from the date of receipt of this order.

Ordered accordingly.

Dictated to Smt P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 20th day of April, 2023.

IRFAN QAMAR, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri P. Srinivasulu	NIL

Documents marked for the Petitioner

Ex.W1: Photocopy of proceedings No.D.Dis/1029/2006, of the District Collector, Kurnool dated 16.12.2006

Ex.W2: Photocopy of proceedings No.D.Dis(C.3) 1062/M/2004 of the District Collector, Kurnool dated 7.5.2005

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Ex.W4: Photocopy of interim orders dt. 1.8.2005 in WPMP No.21154 of 2005 in WP No.16637

Ex.W5: Photocopy of opinion of Rajasekhar Reddy, Asst. Solicitor Gen. of India, Hon'ble High Court, Hyderabad dt.2.11.2005

Ex.W6: Photocopy of lr. Dt. 30.11.2005 form R3 to R2

Ex.W7: Photocopy of representation of WW1 and ors. Dt. 10.10.2006 to R1

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Ex.W14: Photocopy of representation dt. 1.2.2007 from WW1 & ors to RLCC, Hyderabad

Ex.W15: Payment voucher dt. 16.2.2000 with contingent bill dt. 16.2.2000 in original.

Documents marked for the Respondent

NIL

नई दिल्ली, 26 मई, 2023

का.आ. 893.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बडौदा के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जयपुर के पंचाट (54/2019) प्रकाशित करती है।

[सं. एल-12011/50/2019-आई आर(बी-II)]

सलोनी, उप निदेशक

New Delhi, the 26th May, 2023

S.O. 893.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.54/2019) of the Cent.Govt.Indus.Tribunal-cum-Labour Court

Jaipur as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda and their workmen.

[No. L-12011/50/2019-IR (B-II)]

SALONI, Dy. Director

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी, सी.जी.आई.टी. प्रकरण सं. 54 / 2019

Reference No. L-12011/50/2019-IR (B-II)

Dated: 02.12.2019

श्री सूरज पुत्र श्री रमेश चन्द्र, C/o संयुक्त महामंत्री, हिन्द मजदूर सभा,
बंगाली कालोनी, छावनी, कोटा (राजस्थान) .....प्रार्थी

बनाम

1. क्षेत्रीय प्रबंधक, बैंक ऑफ बडौदा, रीजनल ऑफिस, i
पहली मंजिल, पुखराज टॉवर, स्टेशन रोड़ कोटा (राजस्थान) 342002 .....अप्रार्थीगण / विपक्षी

उपस्थितः—

प्रार्थी की तरफ से : कोई उपस्थित नहीं।
अप्रार्थी की तरफ से : कोई उपस्थित नहीं।

: अधिनिर्णय :

दिनांक : 06.05.2022

1. श्रम मंत्रालय भारत सरकार नई दिल्ली द्वारा दिनांक 02.12.2019 को औद्योगिक विवाद अधिनियम 1947 की धारा 10 (1) (डी) व 2A के अन्तर्गत प्रदत्त शक्तियो के अनुसरण में निम्नांकित औद्योगिक विवाद न्यायनिर्णयन हेतु इस अधिकरण को संदर्भित किया गया :—

> **"क्या कर्मकार श्री सूरज, पुत्र श्री रमेश चन्द्र, सफाई कर्मचारी, मोदी कॉलेज शाखा, (जो कथित तौर पर दिनांक 17.10.2010 से 18.03.2014 तक कार्यरत थे), को प्रबंधन, क्षेत्रीय प्रबंधक, बैंक ऑफ बडौदा, क्षेत्रीय कार्यालय, कोटा द्वारा मौखिक आदेश दिनांक 18.03.2014 द्वारा नौकरी से निकालने की कार्यवाही, विधि एवं न्यायसंगत है? यदि नहीं, तो कर्मकार किस राहत का व कब से पाने का हकदार है ?"**

2. श्रम मंत्रालय द्वारा यह विवाद दिनांक 02.12.2019 को पंजीकृत डाक द्वारा इस अधिकरण के साथ साथ विवाद के पक्षकारों यथा प्रार्थी संगठन व विपक्षीगण को भी प्रेषित किया गया था। यह विवाद दिनांक 12.12.2019 को इस अधिकरण में प्राप्त हुआ—तथा पक्षकारों की उपसंजाति व अभिवचनों की प्रतीक्षा में अब तक लंबित रहा है। आज दिनांक 06.05.2022 तक भी इस संदर्भित विवाद के अग्रसरण हेतु प्रार्थी ने अपने दावे का अभिकथन प्रस्तुत नहीं किया है। श्रम मंत्रालय द्वारा संदर्भित विवाद के संबंध में विवाद प्रस्तुत करने वाले पक्षकार (प्रार्थी) को यह निर्देश दिया गया है कि वह उक्त आदेश की प्राप्ति के 15 दिन की अवधि में अपने दावे का अभिकथन इस अधिकरण के समक्ष प्रस्तुत करे। चूकिं प्रार्थी को यह आदेश पंजीकृत डाक के माध्यम से प्रेषित किया गया है, यह उपधारित किया जाना नितांत न्यायोचित है कि— जिस प्रकार इस अधिकरण को संदर्भित आदेश 12.12.2019 को प्राप्त हो चुका है— प्रार्थी को भी यह आदेश प्राप्त हो चुका होगा।

3. इस तथ्यात्मक परिदृश्य में इस अधिकरण का यह सुविचारित अधिमत है कि प्रार्थी व विपक्षीगण के मध्य संदर्भित विवाद के अग्रसरण हेतु प्रार्थी–पक्ष अनिच्छुक व उदासीन है। इसलिए दावे के अभिकथन के अभाव में प्रार्थी संदर्भित विवाद में कोई अनुतोष पाने का अधिकारी नहीं है।

4. संदर्भित विवाद का निस्तारण इसी प्रकार किया जाता है।

5. अधिनिर्णय की प्रतिलिपि औद्योगिक विवाद अधिनियम, 1947 की धारा 17 (1) के अनुसरण में प्रकाषनार्थ प्रेषित की जावें।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 26 मई, 2023

का.आ. 894.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बडौदा के प्रबंधतत्र, संबद्ध नियोजकों और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जयपुर के पंचाट (55/2013) प्रकाशित करती है।

[सं. एल-12012/75/2013-आई आर(बी-II)]

सलोनी, उप निदेशक

New Delhi, the 26th May, 2023

S.O. 894.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.55/2013) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Jaipur as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda and their workmen.

[No. L- 12012/75/2013-IR (B-II)]

SALONI, Dy. Director

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी, सी.जी.आई.टी. प्रकरण सं. 55/2013

Reference No. L-12012/75/2013-IR (B-II) **Dated: 18.10.2013**

संजय कुमार सैनी, पुत्र श्री प्रेम सिंह, निवासी ग्राम डफलपुर,

पोस्ट जहॉगीरपुर, तहसील करौली, जिला करौली (राज0)। .....प्रार्थी

बनाम

2. श्रीमान महाप्रबंधक, बैंक ऑफ बड़ौदा, राजस्थान अंचल, अंचल कार्यालय, चौथा तल, आनन्द भवन, संसार चन्द्र मार्ग, जयपुर।
3. श्रीमान क्षेत्रीय प्रबंधक, बैंक ऑफ बड़ौदा, कृर्षि उपज मण्डी, शाखा भरतपुर, राजस्थान।
4. श्रीमान शाखा प्रबंधक, बैंक ऑफ बड़ौदा, शाखा कुड़गांव, जिला करौली (राज0) .....अप्रार्थीगण/विपक्षी

उपस्थितः–

प्रार्थी की तरफ से : कोई उपस्थित नहीं।

अप्रार्थी की तरफ से : श्री मुनेश चन्द्र शर्मा, अधिवक्ता।

: **अधिनिर्णय** :

दिनांक : 02.08.2022

1. श्रम मंत्रालय भारत सरकार नई दिल्ली द्वारा दिनांक 18.10.2013 को औद्योगिक विवाद अधिनियम 1947 की धारा 10 (1) (डी) व 2। के अन्तर्गत प्रदत्त शक्तियो के अनुसरण में निम्नांकित औद्योगिक विवाद न्यायनिर्णयन हेतु इस अधिकरण को संदर्भित किया गया :–

"क्या अप्रार्थी, बैंक प्रबंधक द्वारा प्रार्थी अंशकालीन श्री संजय कुमार सैनी को नौकरी से हटाने की कार्यवाही वैध एवं न्यायोचित है? यदि नही तो प्रार्थी किस राहत का और कब से पाने का हकदार है? "

2. दिनांक 03.03.2014 को प्रार्थी की ओर से दावे का अभिकथन प्रस्तुत किया गया। जिसके संक्षिप्त अभिवचन इस प्रकार है– प्रार्थी की नियुक्ति विपक्षी सं. 3, के अधीन 02.09.2003 को चतुर्थ श्रेणी कर्मचारी के पद पर हुई, प्रार्थी ने 18.03.2011 तक विपक्षी के अधीन कार्य किया और उसे नियमित रूप से भुगतान दिया गया। 19.03.2011 को विपक्षी सं. 3 ने प्रार्थी को डयूटी पर लेने से मना कर दिया और मौखिक आदेश द्वारा सेवा समाप्त कर दी। प्रार्थी ने प्रत्येक वर्ष 240 दिन से अधिक कार्य लगातार किया है। सेवामुक्ति के पूर्व प्रार्थी को कोई नोटिस, नोटिस वेतन अथवा मुआवजा नहीं दिया गया। प्रार्थी को सेवा मुक्त करते समय उससे कनिष्ठतर अनेक श्रमिक कार्यरत थे और बाद में भी नये श्रमिकों की भर्ती की गई। इस प्रकार विपक्षी द्वारा की गई प्रार्थी की सेवा समाप्ति अधिनियम की धारा 25 (एफ) (जी) व (एच) के प्रावधानों का उल्लघंन है। अतः सेवा समाप्ति को अवैध घोषित कर प्रार्थी को सेवा में निरंतरता एवं विगत वेतन परिलाभों सहित सेवा में बहाल किया जावें।

3. विपक्षीगण ने वादोत्तर में वाद के तथ्यों को अस्वीकार करते हुये यह कहा कि विपक्षी बैंक में भर्ती हेतु विहित प्रक्रिया एवं नियम बने हुये है। प्रार्थी इस प्रक्रिया से नियमानुसार नहीं गुजरा है। प्रार्थी को विपक्षी बैक की शाखा में पेयजल भरने के लिए रखा गया था, उसके एवज में निर्धारित राशि का भुगतान किया गया। प्रार्थी एवं विपक्षी के मध्य नियोक्ता और कर्मकार का संबंध नहीं है। इसलिए प्रार्थी विपक्षी से कोई अनुतोश प्राप्त करने का अधिकारी नहीं है। वाद विलम्ब से प्रस्तुत हुआ है। प्रार्थी ने नियमित रूप से कोई कार्य नहीं किया। विपक्षी ने प्रार्थी को न तो नियुक्त किया और न सेवामुक्त। अतः वाद निरस्त किया जायें।

4. प्रार्थी द्वारा वादोत्तर के उपरांत अतिरिक्त कथन भी प्रस्तुत किये गये और पुनः अनुतोष दिये जाने का निवेदन किया गया।

5. दिनांक 11.10.2021 से यह प्रकरण प्रार्थी की साक्ष्य हेतु नियत किया जाता रहा है। प्रार्थी को दिनांक 24.12.2020 को दस्तावेजो पर आक्षेप के संबंध में प्रार्थना पत्र प्रस्तुत करने हेतु अंतिम अवसर दिया गया था किंतु प्रार्थी आगामी तिथि 04.03.2021 से लगातार अनुपस्थित चला आ रहा है। इसलिये प्रार्थी की साक्ष्य का अवसर समाप्त कर दिया गया। विपक्षी ने भी इस स्थिति में कोई साक्ष्य प्रस्तुत नहीं करना चाहा। अतः साक्ष्य विपक्षी भी समाप्त की गई।

6. दिनांक 01.08.2022 को मैनें विपक्षी अभिभाषक को सुना और पत्रावली का अवलोकन किया। विपक्षी का यह तर्क है कि प्रार्थी ने अपने वाद के समर्थन में कोई साक्ष्य प्रस्तुत नहीं की है, इसलिये वाद निरस्त किया जावें। मैनें इस तर्क पर मनन किया।

7. विपक्षी का यह आक्षेप स्वीकार्य है कि प्रार्थी ने कई अवसर दिये जाने के उपरांत भी कोई साक्ष्य वाद के समर्थन में प्रस्तुत नहीं की है। साक्ष्य के अभाव में प्रार्थी यह प्रमाणित नहीं कर पाया है कि अप्रार्थी बैंक द्वारा प्रार्थी को सेवा से पृथक करने की कार्यवाही किसी प्रकार अवैध एवं अन्यायपूर्ण हो। चूकिं प्रार्थी उस पर आरोपित सिद्विभार को उन्मोचित करने में विफल रहा है, इसलिये साक्ष्य के अभाव में प्रार्थी श्री संजय कुमार सैनी विपक्षीगण से कोई अनुतोष प्राप्त करने का अधिकारी नहीं है।

8. संदर्भित विवाद का इसी प्रकार न्याय निर्णयन किया जाता हैं।

9. अधिनिर्णय की प्रतिलिपि औद्योगिक विवाद अधिनियम, 1947 की धारा 17 (1) के अनुसरण में प्रकाशनार्थ प्रेषित की जावे।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 30 मई, 2023

का.आ. 895.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पीएनबी मेटलाइफ इंश्योरेंस कंपनी लिमिटेड के प्रबंधतत्र, संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (86/2017) प्रकाशित करती है।

[सं. एल-12025/01/2017-आई आर(बी-II)]

सलोनी, उप निदेशक

New Delhi, the 30th May, 2023

S.O. 895.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.86/2017) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Kanpur as shown in the Annexure, in the industrial dispute between the management of PNB Metlife Insurance Co. Ltd. and their workmen.

[No. L- 12025/01/2017– IR (B-1I)]

SALONI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT KANPUR

resent: SOMA SHEKHAR JENA HJS (Retd.)

I.D. No. 86/2017

Ref. No. L-12025/01/2017-IR(B-II) dated:11.12.2017

BETWEEN

Shri Pankaj Sharma S/o Shri Shiv Om Sharma,
S/o Sh. Anil Kumar Kulshreshtha,
117/Q/34, Radha Krishna Housing Society,
Sharda Nagar,
Kanpur (U.P.) - 208023

AND

1. The Associate Director Legar, PNB Metlife Insurance Co. Ltd., 1st Floor, Techni Plus-1, Techniplus, In front of Sawarkar Flyover, Goregaon West, Mumbai – 400062 (Maharashtra)
2. The Manager- Regional Human Resources, M/s P.N.B. Metlife India Insurance Co. Ltd., 2nd Floor, Commercial Motors Building, 11-M.G. Marg, Hazratganj, Lucknow – 226001 (U.P.)

AWARD

This award is delivered with reference to the Industrial Dispute referred to this Tribunal in notification no. L-12025/01/2017 – IR(B-II) dated 11/12/2017 issued by the Government of India Ministry of Labour & Employment as stated in the Schedule.

SCHEDULE

"Whether Shri Pankaj Sharma, AMS Agency Sales can be treated as workman under the provisions of Industrial Disputes Act, 1947? If so, whether the action of the management of PNB Metlife India Insurance Company Limited in terminating his services w.e.f. 30/07/2014

alleged to be working from January, 2008 is just, fair and legal? If not, to what relief he is entitled to and from what date?"

After receiving the reference the claimant workman was called upon to submit his statement of claim. The statement of claim has been filed by the claimant workman with averments which may be summarized as follows:

In January 2008 the claimant joined the employment under the P.N.B. Metlife Insurance Company Ltd. as field worker under Branch Manager Sanjay Pandey and Regional Manager Ajay Awasthi. The claimant workman was awarded with promotion for his commendable performance in the year 2012 and 2013. On 27/06/2014 without any prior notice or any warning the claimant was terminated from the post of Assistant Sales Manager which he was holding shortly before his termination. Claimant had requested his authority to let him know about the reason of his illegal termination, no satisfactory reply was received by the claimant workman from his employer. Originally the claimant approached the Hon'ble High Court of Allahabad challenging his termination but his WRIT application was dismissed with liberty to approach the Industrial Tribunal in the matter of adjudication of illegal termination of his job by the O.P. side.

The O.P. employer (PNB Metlife) has submitted counter with averments which may be concisely stated as follows:

O.P. employer has controverted the claim of the claimant as workman. It is further submitted on behalf of the O.P. that the claimant was appointed as Probationary Assistant Sales Manager, Agency Sales F2 Grade of the company M/s PNB Metlife India Insurance Co. Ltd. It is submitted that the Applicant was managing and administering the affairs as per the terms of the Employment Contract and was given targets on the basis of which his performance was adjudged. It is absolutely denied that the applicant was in service of the Opposite Party Company in the year 2008 to 2011. He was Financial Advisor with PNB Met Life India Insurance Co. Ltd. before joining as Probationary ASM on rolls of the company. It is averred that Financial Advisor's work was on a commission basis and they are not employees of the company. Also there is no master/ servant relationship between PMLI and Pankaj Sharma at that point of time. As per the records of the company the Applicant had applied in November 2011 and was appointed after interview vide appointment letter dated 18th January 2012.

It is denied that there was no complaint in regard to his work and he was working satisfactorily. It is submitted that the Applicant before his appointment as ASM was a Financial Advisor and O.P. had no control or supervision over his working. It is submitted that from 09/02/2012 to 30/05/2012 the Applicant was on probation period and had worked properly but thereafter on his confirmation in post on 31/05/2012 his performance deteriorated gradually. It is submitted that the Applicant was found to be involved in wrongful practices for which a show cause notice was issued to him on 14/08/2012 seeking explanation for misappropriation of customer renewal payment towards spuriously issuing fresh policy login/payment. Further the performance improvement plan was also issued to the applicant vide letter dated 05/05/2014 as an opportunity to improve his performance. On failure of improving his performance after reassessment and despite giving him opportunity for submitting explanation and after due inquiry and investigation he was terminated from services.

It is submitted by the O.P. that the claimant was honoured for his work during the period 2008 up to 2013. Later performance of the claimant was unsatisfactory and he failed to reach the targets. The O.P. denied exersion of any unethical unlawful course on the claimant.

It is submitted that the remuneration given to applicant was as per the Employment Contract and the policy of the Company considering the remuneration of the employees in different designations with respect to their job profiles. The Opposite Party Company had given the salary to the Applicant since the period of appointment 09.02.2012 only and the salary slip is proof is being provided for that period only. It is denied that any salary was given to him during the period of 2008 to 2012 or salary slip was issued before his appointment with the Opposite party. It is asserted by O.P. management that the financial advisors are paid only commissions.

It is denied that he was ever tortured or blamed for any reason pertaining to appointment/promotion of any person. It is further submitted that the reason for issuing show cause notice and termination was solely for his non-performance. It is submitted that the allegations made in the paragraph under reply is false, baseless and malafide with sole intention to misdirect the Tribunal and to disrepute the Company and its management. It is denied that Opposite Party has decided to terminate his service due to any other reason except his non-performance and wrongful acts. It is submitted that the applicant failed to work in the Company as per the terms

and conditions expressed in the Employment contract despite salary was duly and periodically made to him. The Applicant is trying to show discrimination and bring out a new case before this Hon'ble Court and grab an order.

Against the written statement the claimant submitted his rejoinder reiterating his averments made in the statement of claim. In the rejoinder the claimant has reiterated his claims raised in the statement of claim. For adjudication of the Industrial Dispute the following points are to be answered:

1. Whether the claimant (Pankaj Sharma) is a workman.

2. Whether the termination of the claimant is in accordance with law to what relief the claimant is entitled.

1. For the sake of clarity be its stated here that though the O.P. has submitted the written statement it has not participated in cross-examination of the claimant or by adducing its evidence. In the circumstance the evidence of the claimant has virtually gone unchallenged and uncontroverted. The documentary evidence produced by the claimants clearly establishes that the O.P. by letter dated 23/02/2009 did absorb the claimant as financial advisor under General Manager Madhukar Pandey. The uncontroverted documents read together show that the claimant by letter dated 18 January 2012 was appointed as Probationary ASM Agency Sales with basic salary Rs. 1,25,000 per annum with total fixed pay Rs. 2,50,000 per annum.

The unchallenged documents submitted by the claimant clearly show that he was a salaried employee of the O.P. management and the evidence found on record also leads to a presumption that the claimant was working in the insurance sector under the O.P. management without any supervisory assignment for managerial authority. In the scenario the claimant is a workman.

Answer to this point goes in favour of the claimant and against the stand of the O.P.

2. From cumulative reading of the documents containing the communication made between the claimant and the officials of the O.P. it is clearly seen that at one stage the claimant was issued commendation. It is seen that by letter dated 27/06/2014 General Manager Human Resources of the O.P. issued the letter of termination for poor performance of the claimant who was posted as Assistant Sales Manager Agency Sales. The letter does not contain details of assessment of the performance of the claimant though the said letter informs the claimant that one month salary in view of notice was allowed in favour of the claimant. The uncontroverted documents filed by the claimant otherwise show that on 14/04/2014 the claimant had made complaint before the authorities with averments that on 10th April at 06:30 PM Ajay Awasthi and Sanjay Pandey forcefully took away one resignation letter from the claimant. The uncontroverted evidence of the claimant can be taken as reliable evidence and this evidence otherwise establishes that the so called resignation was no resignation. The uncontroverted evidence further establishes that the claimant was fired from the job without any opportunity of submission of explanation. It is not clear if any objective assessment in respect of his performance was under taken. It remains unclear as to how of the performance of the claimant was taken to be poor under what kind of calibration. It is not clear if the claimant was given any compensation before his termination on 2nd July, 2014 which may fall in the category of retrenchment. In view of the uncontroverted evidence the termination of the claimant workman w.e.f. 2nd July, 2014 is unsustainable in eye of law.

Answer to this point goes in favour of the claimant and against the O.P.

3. More than eight years have passed after retrenchment of the claimant during that period of eight year the O.P. company has not taken any work from the claimant. The transactions between the O.P. management and the claimant otherwise show that there was loss of confidence of the O.P. on the claimant workman. Under such scenario reinstatement with back wages is no equitable relief. There is no evidence of the O.P. that the claimant was gainfully employed from July 2014 till now. On the other hand it can be seen that the claimant has also undergone much suffering due to loss of job. In view of the evidence there appears greater propriety for awarding one time compensation in favour of the claimant workman. In the year 2014 before retrenchment the full salary of the claimant was Rs. 2,50,000 per annum w.e.f. 1st June, 2012. Since the claimant was retrenched without justifiable strong grounds he is entitled to get compensation. Such compensation at this point can be worked out by accepting the guess work. There is ample evidence that from 2008 onwards till June 2014 the claimant had served the O.P. in different capacities. Such being the scenario by resorting to guess work the claimant is entitled to get compensation of total fixed pay for one year i.e. Rs. 2,50,000/- from the O.P. management which shall be deposited by the O.P. in the account of the claimant within 30 days from the date of publication of the award.

In the event of non-deposit the claimant shall be entitled to get simple interest at the rate of 8.5 per cent per annum on the said amount from the date of the award till the whole amount is deposited.

Parties are left to bear their respective costs.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 30 मई, 2023

का.आ. 896.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, हिंदुस्तान एयरोनॉटिक्स लिमिटेड, लखनऊ; मैसर्स शाह बंधु, द्वारा श्री योगेंद्र प्रसाद शाह, स्वच्छता ठेकेदार, हरजेंद्र नगर, कानपुर ; मैसर्स ग्रुप-4 फैसिलिटी सर्विस, द्वारा श्री नवल कपूर, निदेशक कार्मिक, 1/97, विद्युत खंड, गोमती नगर, लखनऊ, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री लक्ष्मी नारायण, कामगार,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 73/2011) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 29/05/2023 को प्राप्त हुआ था।

[सं. एल-42025-07-2023-121-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 30th May, 2023

S.O. 896.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 73/2011) of the Central Government Industrial Tribunal cum Labour Court–Lucknow, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Hindustan Aeronautics Limited, Lucknow ;M/s Shah Bandhu, through Shri Yogendra Prasad Shah,Sanitation Contractor, Harjendra Nagar, Kanpur ; M/s Group -4 Facilities Service, through Shri Nawal Kapoor, Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow, and Shri Laxmi Narain,Worker, which was received along with soft copy of the award by the Central Government on 29/05/2023.

[No. L- 42025-07-2023-121-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT LUCKNOW

Present: JUSTICE ANIL KUMAR**,** Presiding Officer

I.D. No. 73/2011

BETWEEN

Laxmi Narain son of late Chhotey Lal,
resident of village Chamraukha, sector 14,
near Pani Ki Tanki, Indira Ngar, Lucknow

AND

1. Hindustan Aeronautics Limited, Lucknow Division, Lucknow through its General Manager.
2. General Manager, Hindustan Aeronautics Limited, Lucknow Division, Lucknow.
3. M/s Shah Bandhu, through Sri Yogendra Prasad Shah,
Sanitation Contractor, 504, Viman Nagar, G.T. Road.
Harjendra Nagar, Kanpur.
4. M/s Group -4 Facilities Service, through Sri Nawal Kapoor, Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow.

AWARD

On 01.03.2011 the claimant/workman has filed the ID case No. 73/2011 as per the provisions of Section 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

Facts of the case:

Hindustan Aeronautics Limited, Lucknow Division (hereinafter referred to as Establishment), is a factory registered under the provisions of the Factories Act, which is situated at Faizabad Road, Lucknow and the sanitation work of the premises of the Establishment as well as Plant and Machinery installed at the factory premises is a perennial as well regular nature of job.

Establishment is an Engineering Industry and the Government has issued a notification dated 24.04.1990 under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 after the recommendation of Contract Labour Advisory Board, whereby 18 works of the Engineering Industry, which are regular or perennial in nature has been prohibited.

However, it was the prevalent practice in establishment that they employed the contract labour for sanitation work of the establishment/premises despite the fact that the sanitation work was regular in nature; and the claimant/workman was working in the establishment right from the very beginning i.e. from the date, the factory was established and continuously worked till the date of termination i.e. 21.12.2001.

As per the case workman order of termination dated 21.12.2001 by which his services in an illegal and unjustified manner was terminated, inasmuch as in establishment of the employers there were more than 100 workmen employed as such the compliance of Section 25-N of the Industrial Disputes Act was necessary but before terminating the services of the workmen, the employers have not complied with the provisions of Section 25-N of the Industrial Disputes Act.

Further, the services of the workman have been terminated by the principal employer not by the contractor and the work which were being performed by the concerned workman still exist with employers and the same is being carried out by employing new workmen on contract basis.

In the claim petition it has been pleaded that earlier the workmen's Union in Establishment i.e. Hindustan Aeronautics Karamchari Sabha, raised the dispute of the workman along with some other workmen before the State Government which, was referred for adjudication before the Industrial Tribunal (II), U.P., Lucknow, registered before Industrial Tribunal (II), U.P., Lucknow as Adj. Case No.: 126 of 2002.

However, on account of the fact that the workman along with some other workmen were not satisfied with the pairavi of the Union as such an authority letter was filed along with an application by 20 workmen amongst the concerned workman to represent the said case but the Union, filed objection that as applicants who have filed the application are not party in the said case as such they are not entitled to represent the case. By an order dated 10.03.2010, the Hon'ble Presiding Officer held that the workmen are not satisfied with the proceedings through Union, they can raise separate dispute "under the provisions of Act.

Thereafter, an application was filed by 36 workmen including the claimant/workman on 10.07.2010 before, the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow for deletion of the names of the workmen from the reference order so that they may be in position to raise fresh industrial dispute before the competent Forum and the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow after hearing the parties concerned was pleased to allow the said application except three whose names were not mentioned in reference order.

In pursuance to order dated 20.07.2010 the workman concerned along with 32 other workman filed an application before the Regional Labour Commissioner (Central), Lucknow which was registered as Case No. LKO-8(2-32)/2010: Laxmi Narain and 32 others Vs. General Manager, Hindustan Aeronautics Limited and others.

Thereafter, Regional Labour Commissioner (Central), Lucknow, called upon the parties for conciliation proceedings and in pursuance thereof Hindustan Aeronautics Limited appeared before him and filed their objections and due to the negative attitude of the employers, no settlement could be arrived between the parties.

Since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.

In view of above said factual background the present case has been filed u/s 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) with following prayer:

"WHEREFORE, it is most respectfully prayed that the Hon'ble Court may be pleased to declare that the action of the management in terminating the services of workman with effect from 21.12.2001 is neither legal nor justified and accordingly the workman concerned is entitled to get reinstatement in service together with entire consequential benefits including back wages and other service benefits, in the interest of justice."

On behalf the respondent written statement has been filed on 15.05.2012 in which following preliminary objection was taken:

"1. That the aforesaid ID Case No.82/2011 is not maintainable as per the provisions of ID Act 1947 (as mended by ID (Amendment) Act 2010) because the same is barred by limitation U/S 2A(3) of the ID Act (Amendment 2010) which is quoted as below:

> *2A(3) "the application referred to in sub section 2 shall be made to Labour Court or Tribunal before the expiry of 3 years from the date of discharge, dismissal, retrenchment or otherwise termination service as specified in sub section 1".*

In addition to the above said facts, the respondent in its written statement also given the parawise reply to the case as set up by the claimant in his statement of claim.

Sri Adarsh Jadghari has submitted that before deciding the matter in question on merit, the question "whether the claim petition filed by the claimant on 28.02.2011 as per the provisions of section 2A (2) of the Act, aggrieved by the order of termination/retrenchment dated 21.12.2001 is barred by the period of limitation as provided u/s 2A(3) of the Act or not?"

Sri Adarsh Jadghari in support of his argument submits, admittedly as per the case of the claimant his services were terminated on 21.12.2001, aggrieved by the same he filed present industrial dispute u/s 2A (2) of the Act; however, u/s 2A (3) of the Act the period of limitation is provided for three years, from the date of retrenchment/termination, so, the present claim petition is barred by the period of limitation as provided u/s 2A (3) of the Act, liable to be dismissed.

Sri D.K. Gupta, learned counsel for claimant, rebutting the said contention has placed reliance as pleaded in the statement of claim and submits that in view of the facts as stated hereinabove especially in paragraph 27 & 28, which are quoted herein below:

"27. That since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.

28. That in pursuance thereof, the workman concerned approaching the Hon'ble Tribunal for the adjudication of the industrial disputes as prevalent between the workman and the employers."

The present claim petition filed u/s 2 (2) of the Act is maintainable and the arguments as raised by the learned counsel for respondent that same is barred by the period limitation is devoid of merit, be rejected.

I have heard the learned counsel for parties and gone through the record.

Before deciding the same it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947 in brief which are that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for

such periods as may be specified, upto a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words, industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but a continuous demand for fair return to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc.(***Hariprasad Vs. A.D.Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organization also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

"*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or

not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No. 24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No.24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."

Now the core question to be considered is that in view of the facts which are stated hereinabove, that admittedly the services of applicant was terminated on 21.12.2001, thereafter he has filed the present case before this Tribunal u/s 2A of the Act on 01.03.2011 on the grounds as taken by him in his claim petition, is maintainable or barred by the period of limitation as provided u/s 2A(3) of the Act.

Answer to the said question find place in the judgment passed by Hon'ble the Karnataka High Court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041***, relevant potion quoted as under:

"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.

20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:

"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."

21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.

8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.

The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.

9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.

10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)

(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)

(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)

(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and positon of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755***.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must

ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".

In the case of ***Union of India Vs. Hansoli Devo (2002) 7 SCC 273***, Hon'ble the Supreme Court observed as under:-

"9.It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."

In the case of ***Patango Kadam Vs. Prithviraj Sayajiro Yadav Deshmukh (2001) 3 SCC 594***, took the view:-

"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."

Also, Hon'ble the Supreme Court in the case of ***Popat Bahiru Govardhane & others vs. Special Land Acquisition Officer & another (2013) 10 SCC 765*** has held as under:

"16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."

(See Martin Burn Ltd. v. Corpn. of Calcutta10, AIR p. 535, para 14 and Rohitash Kumar v. Om Prakash Sharma11.)

Reverting to the facts of the present case, as per admitted position, the services of the workman was terminated on 21.12.2001, challenged by him by filing the present industrial dispute on 01.03.2011.

So, keeping in view the above said facts as well as that the workman cannot derive any benefit from the facts on which he has approached the Tribunal after expiry of period three years from the date of his termination, because his services were terminated on 21.12.2001 and filed the present case on 01.03.2011 u/s 2A (2) of the Act, as such, the claim petition is barred by the period of limitation provided u/s 2A (3) of the Act, liable to be rejected.

Accordingly, the same is rejected on the ground that same is barred by period of limitation as per section 2A (3) of the Industrial Disputes Act, 1947, with liberty to the claimant to pursue its case before appropriate forum as per law.

Award as above.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 30 मई, 2023

का.आ. 897.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, हिंदुस्तान एयरोनॉटिक्स लिमिटेड, लखनऊ; मैसर्स शाह बंधु, द्वारा श्री योगेंद्र प्रसाद शाह, स्वच्छता ठेकेदार, हरजेंद्र नगर, कानपुर ; मैसर्स ग्रुप-4 फैसिलिटी सर्विस, द्वारा श्री नवल कपूर, निदेशक कार्मिक, 1/97, विद्युत खंड, गोमती नगर, लखनऊ, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री नंद लाल, कामगार,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या

89/2011) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 29/05/2023 को प्राप्त हुआ था ।

[सं. एल-42025-07-2023-113-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 30th May, 2023

S.O. 897.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 89/2011) of the Central Government Industrial Tribunal cum Labour Court–Lucknow, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Hindustan Aeronautics Limited, Lucknow ;M/s Shah Bandhu, through Shri Yogendra Prasad Shah,Sanitation Contractor, Harjendra Nagar, Kanpur ; M/s Group -4 Facilities Service, through Shri Nawal Kapoor, Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow, and Shri Nand lal, Worker, which was received along with soft copy of the award by the Central Government on 29/05/2023.

[No. L-42025-07-2023-113 -IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT LUCKNOW

Present: JUSTICE ANIL KUMAR**,** Presiding Officer

I.D. No. 89/2011

BETWEEN

Nand Lal son of late Maiku Lal, Lavkush Nagar,
A Block, Sector 22, Indira Nagar, Lucknow

AND

1. Hindustan Aeronautics Limited, Lucknow Division, Lucknow through its General Manager.
2. General Manager, Hindustan Aeronautics Limited, Lucknow Division, Lucknow.
3. M/s Shah Bandhu, through Sri Yogendra Prasad Shah,

   Sanitation Contractor, 504, Viman Nagar, G.T. Road.

   Harjendra Nagar, Kanpur.
4. M/s Group -4 Facilities Service, through Sri Nawal Kapoor, Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow.

AWARD

On 28.02.2011 the claimant/workman has filed the ID case No. 89/2011 as per the provisions of Section 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

Facts of the case:

Hindustan Aeronautics Limited, Lucknow Division (hereinafter referred to as Establishment), is a factory registered under the provisions of the Factories Act, which is situated at Faizabad Road, Lucknow and the sanitation work of the premises of the Establishment as well as Plant and Machinery installed at the factory premises is a perennial as well regular nature of job.

Establishment is an Engineering Industry and the Government has issued a notification dated 24.04.1990 under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 after the

recommendation of Contract Labour Advisory Board, whereby 18 works of the Engineering Industry, which are regular or perennial in nature has been prohibited.

However, it was the prevalent practice in establishment that they employed the contract labour for sanitation work of the establishment/premises despite the fact that the sanitation work was regular in nature; and the claimant/workman was working in the establishment right from the very beginning i.e. from the date, the factory was established and continuously worked till the date of termination i.e. 21.12.2001.

As per the case workman order of termination dated 21.12.2001 by which his services in an illegal and unjustified manner was terminated, inasmuch as in establishment of the employers there were more than 100 workmen employed as such the compliance of Section 25-N of the Industrial Disputes Act was necessary but before terminating the services of the workmen, the employers have not complied with the provisions of Section 25-N of the Industrial Disputes Act.

Further, the services of the workman have been terminated by the principal employer not by the contractor and the work which were being performed by the concerned workman still exist with employers and the same is being carried out by employing new workmen on contract basis.

In the claim petition it has been pleaded that earlier the workmen's Union in Establishment i.e. Hindustan Aeronautics Karamchari Sabha, raised the dispute of the workman along with some other workmen before the State Government which, was referred for adjudication before the Industrial Tribunal (II), U.P., Lucknow, registered before Industrial Tribunal (II), U.P., Lucknow as Adj. Case No.: 126 of 2002.

However, on account of the fact that the workman along with some other workmen were not satisfied with the pairavi of the Union as such an authority letter was filed along with an application by 20 workmen amongst the concerned workman to represent the said case but the Union, filed objection that as applicants who have filed the application are not party in the said case as such they are not entitled to represent the case. By an order dated 10.03.2010, the Hon'ble Presiding Officer held that the workmen are not satisfied with the proceedings through Union, they can raise separate dispute "under the provisions of Act.

Thereafter, an application was filed by 36 workmen including the claimant/workman on 10.07.2010 before, the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow for deletion of the names of the workmen from the reference order so that they may be in position to raise fresh industrial dispute before the competent Forum and the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow after hearing the parties concerned was pleased to allow the said application except three whose names were not mentioned in reference order.

In pursuance to order dated 20.07.2010 the workman concerned along with 32 other workman filed an application before the Regional Labour Commissioner (Central), Lucknow which was registered as Case No. LKO-8(2-32)/2010: Laxmi Narain and 32 others Vs. General Manager, Hindustan Aeronautics Limited and others.

Thereafter, Regional Labour Commissioner (Central), Lucknow, called upon the parties for conciliation proceedings and in pursuance thereof Hindustan Aeronautics Limited appeared before him and filed their objections and due to the negative attitude of the employers, no settlement could be arrived between the parties.

Since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.

In view of above said factual background the present case has been filed u/s 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) with following prayer:

> *"WHEREFORE, it is most respectfully prayed that the Hon'ble Court may be pleased to declare that the action of the management in terminating the services of workman with effect from 21.12.2001 is neither legal nor justified and accordingly the workman concerned is entitled to get reinstatement in service together with entire consequential benefits including back wages and other service benefits, in the interest of justice."*

On behalf the respondent written statement has been filed on 15.05.2012 in which following preliminary objection was taken:

"1. That the aforesaid ID Case No.82/2011 is not maintainable as per the provisions of ID Act 1947 (as mended by ID (Amendment) Act 2010) because the same is barred by limitation U/S 2A(3) of the ID Act (Amendment 2010) which is quoted as below:

2A(3) "the application referred to in sub section 2 shall be made to Labour Court or Tribunal before the expiry of 3 years from the date of discharge, dismissal, retrenchment or otherwise termination service as specified in sub section 1".

In addition to the above said facts, the respondent in its written statement also given the parawise reply to the case as set up by the claimant in his statement of claim.

Sri Adarsh Jadghari has submitted that before deciding the matter in question on merit, the question "whether the claim petition filed by the claimant on 28.02.2011 as per the provisions of section 2A (2) of the Act, aggrieved by the order of termination/retrenchment dated 21.12.2001 is barred by the period of limitation as provided u/s 2A(3) of the Act or not?"

Sri Adarsh Jadghari in support of his argument submits, admittedly as per the case of the claimant his services were terminated on 21.12.2001, aggrieved by the same he filed present industrial dispute u/s 2A (2) of the Act; however, u/s 2A (3) of the Act the period of limitation is provided for three years, from the date of retrenchment/termination, so, the present claim petition is barred by the period of limitation as provided u/s 2A (3) of the Act, liable to be dismissed.

Sri D.K. Gupta, learned counsel for claimant, rebutting the said contention has placed reliance as pleaded in the statement of claim and submits that in view of the facts as stated hereinabove especially in paragraph 27 & 28, which are quoted herein below:

"27. That since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.

28. That in pursuance thereof, the workman concerned approaching the Hon'ble Tribunal for the adjudication of the industrial disputes as prevalent between the workman and the employers."

The present claim petition filed u/s 2 (2) of the Act is maintainable and the arguments as raised by the learned counsel for respondent that same is barred by the period limitation is devoid of merit, be rejected.

I have heard the learned counsel for parties and gone through the record.

Before deciding the same it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947 in brief which are that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, upto a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words, industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but a continuous demand for fair return to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc.(***Hariprasad Vs. A.D.Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organization also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

"*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No. 24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No.24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."

Now the core question to be considered is that in view of the facts which are stated hereinabove, that admittedly the services of applicant was terminated on 21.12.2001, thereafter he has filed the present case before this Tribunal u/s 2A of the Act on 28.02.2011 on the grounds as taken by him in his claim petition, is maintainable or barred by the period of limitation as provided u/s 2A(3) of the Act.

Answer to the said question find place in the judgment passed by Hon'ble the Karnataka High Court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041***, relevant potion quoted as under:

"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.

20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:

> *"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."*

21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it

has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.

8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.

The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.

9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.

10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)

(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)

(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)

(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and positon of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755***.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".

In the case of ***Union of India Vs. Hansoli Devo (2002) 7 SCC 273***, Hon'ble the Supreme Court observed as under:-

"9.It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."

In the case of ***Patango Kadam Vs. Prithviraj Sayajiro Yadav Deshmukh (2001) 3 SCC 594***, took the view:-

"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."

Also, Hon'ble the Supreme Court in the case of ***Popat Bahiru Govardhane & others vs. Special Land Acquisition Officer & another (2013) 10 SCC 765*** has held as under:

"16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."

(See Martin Burn Ltd. v. Corpn. of Calcutta10, AIR p. 535, para 14 and Rohitash Kumar v. Om Prakash Sharma11.)

Reverting to the facts of the present case, as per admitted position, the services of the workman was terminated on 21.12.2001 and the same has been challenged by him by filing the present industrial dispute on 28.02.2011.

So, keeping in view the above said facts as well as that the workman cannot derive any benefit from the facts on which he has approached the Tribunal after expiry of period three years from the date of his termination, because his services were terminated on 21.12.2001 and filed the present case on 28.02.2011 u/s 2A (2) of the Act, as such, the claim petition is barred by the period of limitation provided u/s 2A (3) of the Act, liable to be rejected.

Accordingly, the same is rejected on the ground that same is barred by period of limitation as per section 2A (3) of the Industrial Disputes Act, 1947, with liberty to the claimant to pursue its case before appropriate forum as per law.

Award as above.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 30 मई, 2023

का.आ. 898.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, हिंदुस्तान एयरोनॉटिक्स लिमिटेड, लखनऊ; मैसर्स शाह बंधु, द्वारा श्री योगेंद्र प्रसाद शाह, स्वच्छता ठेकेदार, हरजेंद्र नगर, कानपुर ; मैसर्स ग्रुप-4 फैसिलिटी सर्विस, द्वारा श्री नवल कपूर, निदेशक कार्मिक, 1/97, विद्युत खंड, गोमती नगर, लखनऊ, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री खुशी राम, कामगार,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 84/2011) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 29/05/2023 को प्राप्त हुआ था ।

[सं. एल-42025-07-2023-124-आई आर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 30th May, 2023

S.O. 898.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 84/2011) of the Central Government Industrial Tribunal cum Labour Court–Lucknow, as shown in the Annexure, in the Industrial dispute between the employers in relation

to The General Manager, Hindustan Aeronautics Limited, Lucknow ;M/s Shah Bandhu, through Shri Yogendra Prasad Shah,Sanitation Contractor, Harjendra Nagar, Kanpur ; M/s Group -4 Facilities Service, through Shri Nawal Kapoor, Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow, and Shri Khusi Ram,Worker, which was received along with soft copy of the award by the Central Government on 29/05/2023.

[No. L-42025-07-2023-124 -IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT LUCKNOW

PRESENT: Justice ANIL KUMAR**,** Presiding Officer

I.D. No. 84/2011

BETWEEN

Khusi Ram son of late Kanhai resident of 631/161,
Ismailganj, Post Chinhat, Faizabad Raod, Lucknow.

AND

1. Hindustan Aeronautics Limited, Lucknow Division, Lucknow through its General Manager.
2. General Manager, Hindustan Aeronautics Limited, Lucknow Division, Lucknow.
3. M/s Shah Bandhu, through Sri Yogendra Prasad Shah,
Sanitation Contractor, 504, Viman Nagar, G.T. Road.
Harjendra Nagar, Kanpur.
4. M/s Group -4 Facilities Service, through Sri Nawal Kapoor,
Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow.

AWARD

On 20.05.2011 the claimant/workman has filed the ID case No. 84/2011 as per the provisions of Section 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

Facts of the case:

Hindustan Aeronautics Limited, Lucknow Division (hereinafter referred to as Establishment), is a factory registered under the provisions of the Factories Act, which is situated at Faizabad Road, Lucknow and the sanitation work of the premises of the Establishment as well as Plant and Machinery installed at the factory premises is a perennial as well regular nature of job.

Establishment is an Engineering Industry and the Government has issued a notification dated 24.04.1990 under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 after the recommendation of Contract Labour Advisory Board, whereby 18 works of the Engineering Industry, which are regular or perennial in nature has been prohibited.

However, it was the prevalent practice in establishment that they employed the contract labour for sanitation work of the establishment/premises despite the fact that the sanitation work was regular in nature; and the claimant/workman was working in the establishment right from the very beginning i.e. from the date, the factory was established and continuously worked till the date of termination i.e. 21.12.2001.

As per the case workman order of termination dated 21.12.2001 by which his services in an illegal and unjustified manner was terminated, inasmuch as in establishment of the employers there were more than 100 workmen employed as such the compliance of Section 25-N of the Industrial Disputes Act was necessary but before terminating the services of the workmen, the employers have not complied with the provisions of Section 25-N of the Industrial Disputes Act.

Further, the services of the workman have been terminated by the principal employer not by the contractor and the work which were being performed by the concerned workman still exist with employers and the same is being carried out by employing new workmen on contract basis.

In the claim petition it has been pleaded that earlier the workmen's Union in Establishment i.e. Hindustan Aeronautics Karamchari Sabha, raised the dispute of the workman along with some other workmen before the State Government which, was referred for adjudication before the Industrial Tribunal (II), U.P., Lucknow, registered before Industrial Tribunal (II), U.P., Lucknow as Adj. Case No.: 126 of 2002.

However, on account of the fact that the workman along with some other workmen were not satisfied with the pairavi of the Union as such an authority letter was filed along with an application by 20 workmen amongst the concerned workman to represent the said case but the Union, filed objection that as applicants who have filed the application are not party in the said case as such they are not entitled to represent the case. By an order dated 10.03.2010, the Hon'ble Presiding Officer held that the workmen are not satisfied with the proceedings through Union, they can raise separate dispute "under the provisions of Act.

Thereafter, an application was filed by 36 workmen including the claimant/workman on 10.07.2010 before, the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow for deletion of the names of the workmen from the reference order so that they may be in position to raise fresh industrial dispute before the competent Forum and the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow after hearing the parties concerned was pleased to allow the said application except three whose names were not mentioned in reference order.

In pursuance to order dated 20.07.2010 the workman concerned along with 32 other workman filed an application before the Regional Labour Commissioner (Central), Lucknow which was registered as Case No. LKO-8(2-32)/2010: Laxmi Narain and 32 others Vs. General Manager, Hindustan Aeronautics Limited and others.

Thereafter, Regional Labour Commissioner (Central), Lucknow, called upon the parties for conciliation proceedings and in pursuance thereof Hindustan Aeronautics Limited appeared before him and filed their objections and due to the negative attitude of the employers, no settlement could be arrived between the parties.

Since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.

In view of above said factual background the present case has been filed u/s 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) with following prayer:

> *"WHEREFORE, it is most respectfully prayed that the Hon'ble Court may be pleased to declare that the action of the management in terminating the services of workman with effect from 21.12.2001 is neither legal nor justified and accordingly the workman concerned is entitled to get reinstatement in service together with entire consequential benefits including back wages and other service benefits, in the interest of justice."*

On behalf the respondent written statement has been filed on 15.05.2012 in which following preliminary objection was taken:

> *"1. That the aforesaid ID Case No.82/2011 is not maintainable as per the provisions of ID Act 1947 (as mended by ID (Amendment) Act 2010) because the same is barred by limitation U/S 2A(3) of the ID Act (Amendment 2010) which is quoted as below:*
>
> > *2A(3) "the application referred to in sub section 2 shall be made to Labour Court or Tribunal before the expiry of 3 years from the date of discharge, dismissal, retrenchment or otherwise termination service as specified in sub section 1".*

In addition to the above said facts, the respondent in its written statement also given the parawise reply to the case as set up by the claimant in his statement of claim.

Sri Adarsh Jadghari has submitted that before deciding the matter in question on merit, the question "whether the claim petition filed by the claimant on 28.02.2011 as per the provisions of section

2A (2) of the Act, aggrieved by the order of termination/retrenchment dated 21.12.2001 is barred by the period of limitation as provided u/s 2A(3) of the Act or not?"

Sri Adarsh Jadghari in support of his argument submits, admittedly as per the case of the claimant his services were terminated on 21.12.2001, aggrieved by the same he filed present industrial dispute u/s 2A (2) of the Act; however, u/s 2A (3) of the Act the period of limitation is provided for three years, from the date of retrenchment/termination, so, the present claim petition is barred by the period of limitation as provided u/s 2A (3) of the Act, liable to be dismissed.

Sri D.K. Gupta, learned counsel for claimant, rebutting the said contention has placed reliance as pleaded in the statement of claim and submits that in view of the facts as stated hereinabove especially in paragraph 27 & 28, which are quoted herein below:

"27. That since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.

28. That in pursuance thereof, the workman concerned approaching the Hon'ble Tribunal for the adjudication of the industrial disputes as prevalent between the workman and the employers."

The present claim petition filed u/s 2 (2) of the Act is maintainable and the arguments as raised by the learned counsel for respondent that same is barred by the period limitation is devoid of merit, be rejected.

I have heard the learned counsel for parties and gone through the record.

Before deciding the same it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947 in brief which are that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, upto a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words, industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of

labour struggle is nothing but a continuous demand for fair return to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc.(***Hariprasad Vs. A.D.Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organization also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

"*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No. 24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No.24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of

the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."

Now the core question to be considered is that in view of the facts which are stated hereinabove, that admittedly the services of applicant was terminated on 21.12.2001, thereafter he has filed the present case before this Tribunal u/s 2A of the Act on 20.05.2011 on the grounds as taken by him in his claim petition, is maintainable or barred by the period of limitation as provided u/s 2A(3) of the Act.

Answer to the said question find place in the judgment passed by Hon'ble the Karnataka High Court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041***, relevant potion quoted as under:

"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.

20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:

"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."

21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

> *"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.*
>
> *8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.*
>
> *The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.*
>
> *9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.*
>
> *10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."*

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

> *"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-*
>
> > *(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)*
> >
> > *(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)*
> >
> > *(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)*
> >
> > *(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)*
>
> *5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the*

Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and positon of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755***.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".

In the case of ***Union of India Vs. Hansoli Devo (2002) 7 SCC 273***, Hon'ble the Supreme Court observed as under:-

"9.It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."

In the case of ***Patango Kadam Vs. Prithviraj Sayajiro Yadav Deshmukh (2001) 3 SCC 594***, took the view:-

"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."

Also, Hon'ble the Supreme Court in the case of ***Popat Bahiru Govardhane & others vs. Special Land Acquisition Officer & another (2013) 10 SCC 765*** has held as under:

"16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."

(See Martin Burn Ltd. v. Corpn. of Calcutta10, AIR p. 535, para 14 and Rohitash Kumar v. Om Prakash Sharma11.)

Reverting to the facts of the present case, as per the admitted position, the services of the workman was terminated on 21.12.2001, challenged by him by filing the present industrial dispute on 20.05.2011.

So, keeping in view the above said facts as well as that the workman cannot derive any benefit from the facts on which he has approached the Tribunal after expiry of period three years from the date of his termination, because his services were terminated on 21.12.2001 and filed the present case on 20.05.2011 u/s 2A (2) of the Act, as such, the claim petition is barred by the period of limitation provided u/s 2A (3) of the Act, liable to be rejected.

Accordingly, the same is rejected on the ground that same is barred by period of limitation as per section 2A (3) of the Industrial Disputes Act, 1947, with liberty to the claimant to pursue its case before appropriate forum as per law.

Award as above.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 30 मई, 2023

का.आ. 899.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, हिंदुस्तान एयरोनॉटिक्स लिमिटेड, लखनऊ; मैसर्स शाह बंधु, द्वारा श्री योगेंद्र प्रसाद शाह, स्वच्छता ठेकेदार, हरजेंद्र नगर, कानपुर ; मैसर्स ग्रुप-4 फैसिलिटी सर्विस, द्वारा श्री नवल कपूर, निदेशक कार्मिक, 1/97, विद्युत खंड, गोमती नगर, लखनऊ, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री राम मनोहर, कामगार,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 78/2011) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 29/05/2023 को प्राप्त हुआ था ।

[सं. एल-42025-07-2023-122-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 30th May, 2023

S.O. 899.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 78/2011) of the Central Government Industrial Tribunal cum Labour Court–Lucknow, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Hindustan Aeronautics Limited, Lucknow ;M/s Shah Bandhu, through Shri Yogendra Prasad Shah,Sanitation Contractor, Harjendra Nagar, Kanpur ; M/s Group -4 Facilities Service, through Shri Nawal Kapoor, Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow, and Shri Ram Monohar,Worker, which was received along with soft copy of the award by the Central Government on 29/05/2023.

[No. L-42025-07-2023-122 -IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT LUCKNOW

Present: Justice ANIL KUMAR, Presiding Officer

I.D. No. 78/2011

BETWEEN

Ram Monohar resident of village Nurpur Behta,
post Chinhat Police station Chinhat District Lucknow (now deceased) through
Smt. Shiv Pyari wife of claimant.

AND

1. Hindustan Aeronautics Limited, Lucknow Division, Lucknow through its General Manager.
2. General Manager, Hindustan Aeronautics Limited, Lucknow Division, Lucknow.
3. M/s Shah Bandhu, through Sri Yogendra Prasad Shah,
Sanitation Contractor, 504, Viman Nagar, G.T. Road.
Harjendra Nagar, Kanpur.
4. M/s Group -4 Facilities Service, through Sri Nawal Kapoor,
Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow.

AWARD

On 28.02.2011 the claimant/workman now has filed the ID case No. 78/2011 as per the provisions of Section 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

Facts of the case:

Hindustan Aeronautics Limited, Lucknow Division (hereinafter referred to as Establishment), is a factory registered under the provisions of the Factories Act, which is situated at Faizabad Road, Lucknow and the sanitation work of the premises of the Establishment as well as Plant and Machinery installed at the factory premises is a perennial as well regular nature of job.

Establishment is an Engineering Industry and the Government has issued a notification dated 24.04.1990 under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 after the recommendation of Contract Labour Advisory Board, whereby 18 works of the Engineering Industry, which are regular or perennial in nature has been prohibited.

However, it was the prevalent practice in establishment that they employed the contract labour for sanitation work of the establishment/premises despite the fact that the sanitation work was regular in nature; and the claimant/workman was working in the establishment right from the very beginning i.e. from the date, the factory was established and continuously worked till the date of termination i.e. 21.12.2001.

As per the case workman order of termination dated 21.12.2001 by which his services in an illegal and unjustified manner was terminated, inasmuch as in establishment of the employers there were more than 100 workmen employed as such the compliance of Section 25-N of the Industrial Disputes Act was necessary but before terminating the services of the workmen, the employers have not complied with the provisions of Section 25-N of the Industrial Disputes Act.

Further, the services of the workman have been terminated by the principal employer not by the contractor and the work which were being performed by the concerned workman still exist with employers and the same is being carried out by employing new workmen on contract basis.

In the claim petition it has been pleaded that earlier the workmen's Union in Establishment i.e. Hindustan Aeronautics Karamchari Sabha, raised the dispute of the workman along with some other workmen before the State Government which, was referred for adjudication before the Industrial Tribunal (II), U.P., Lucknow, registered before Industrial Tribunal (II), U.P., Lucknow as Adj. Case No.: 126 of 2002.

However, on account of the fact that the workman along with some other workmen were not satisfied with the pairavi of the Union as such an authority letter was filed along with an application by 20 workmen amongst the concerned workman to represent the said case but the Union, filed objection that as applicants who have filed the application are not party in the said case as such they are not entitled to represent the case. By an order dated 10.03.2010, the Hon'ble Presiding Officer held that the workmen are not satisfied with the proceedings through Union, they can raise separate dispute "under the provisions of Act.

Thereafter, an application was filed by 36 workmen including the claimant/workman on 10.07.2010 before, the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow for deletion of the names of the workmen from the reference order so that they may be in position to raise fresh industrial dispute before the competent Forum and the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow after hearing the parties concerned was pleased to allow the said application except three whose names were not mentioned in reference order.

In pursuance to order dated 20.07.2010 the workman concerned along with 32 other workman filed an application before the Regional Labour Commissioner (Central), Lucknow which was registered as Case No. LKO-8(2-32)/2010: Laxmi Narain and 32 others Vs. General Manager, Hindustan Aeronautics Limited and others.

Thereafter, Regional Labour Commissioner (Central), Lucknow, called upon the parties for conciliation proceedings and in pursuance thereof Hindustan Aeronautics Limited appeared before him and filed their objections and due to the negative attitude of the employers, no settlement could be arrived between the parties.

Since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.

In view of above said factual background the present case has been filed u/s 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) with following prayer:

> *"WHEREFORE, it is most respectfully prayed that the Hon'ble Court may be pleased to declare that the action of the management in terminating the services of workman with effect from 21.12.2001 is neither legal nor justified and accordingly the workman concerned is entitled to get reinstatement in service together with entire consequential benefits including back wages and other service benefits, in the interest of justice."*

On behalf the respondent written statement has been filed on 15.05.2012 in which following preliminary objection was taken:

> *"1. That the aforesaid ID Case No.82/2011 is not maintainable as per the provisions of ID Act 1947 (as mended by ID (Amendment) Act 2010) because the same is barred by limitation U/S 2A(3) of the ID Act (Amendment 2010) which is quoted as below:*
>
> > *2A(3) "the application referred to in sub section 2 shall be made to Labour Court or Tribunal before the expiry of 3 years from the date of discharge, dismissal, retrenchment or otherwise termination service as specified in sub section 1".*

In addition to the above said facts, the respondent in its written statement also given the parawise reply to the case as set up by the claimant in his statement of claim.

Sri Adarsh Jadghari has submitted that before deciding the matter in question on merit, the question "whether the claim petition filed by the claimant on 28.02.2011 as per the provisions of section 2A (2) of the Act, aggrieved by the order of termination/retrenchment dated 21.12.2001 is barred by the period of limitation as provided u/s 2A(3) of the Act or not?"

Sri Adarsh Jadghari in support of his argument submits, admittedly as per the case of the claimant his services were terminated on 21.12.2001, aggrieved by the same he filed present industrial dispute u/s 2A (2) of the Act; however, u/s 2A (3) of the Act the period of limitation is provided for three years, from the date of retrenchment/termination, so, the present claim petition is barred by the period of limitation as provided u/s 2A (3) of the Act, liable to be dismissed.

Sri D.K. Gupta, learned counsel for claimant, rebutting the said contention has placed reliance as pleaded in the statement of claim and submits that in view of the facts as stated hereinabove especially in paragraph 27 & 28, which are quoted herein below:

> *"27. That since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.*
>
> *28. That in pursuance thereof, the workman concerned approaching the Hon'ble Tribunal for the adjudication of the industrial disputes as prevalent between the workman and the employers."*

The present claim petition filed u/s 2 (2) of the Act is maintainable and the arguments as raised by the learned counsel for respondent that same is barred by the period limitation is devoid of merit, be rejected.

I have heard the learned counsel for parties and gone through the record.

Before deciding the same it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947 in brief which are that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, upto a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words, industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but a continuous demand for fair return to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc.(***Hariprasad Vs. A.D.Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organization also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication

machinery. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

"*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No. 24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No.24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."

Now the core question to be considered is that in view of the facts which are stated hereinabove, that admittedly the services of applicant was terminated on 21.12.2001, thereafter he has filed the present case before this Tribunal u/s 2A of the Act on 28.02.2011 on the grounds as taken by him in his claim petition, is maintainable or barred by the period of limitation as provided u/s 2A(3) of the Act.

Answer to the said question find place in the judgment passed by Hon'ble the Karnataka High Court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041***, relevant potion quoted as under:

> *"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.*
>
> *20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:*
>
> > *"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."*
>
> *21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."*

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

> *"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.*
>
> *8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main provision providing for the limitation*

would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.

The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.

9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.

10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)

(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)

(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)

(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and positon of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of***

Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

> *"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".*

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

> *"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.*
>
> *25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".*

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

> *"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".*

In the case of ***Union of India Vs. Hansoli Devo (2002) 7 SCC 273***, Hon'ble the Supreme Court observed as under:-

> *"9.It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."*

In the case of ***Patango Kadam Vs. Prithviraj Sayajiro Yadav Deshmukh (2001) 3 SCC 594***, took the view:-

> *"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."*

Also, Hon'ble the Supreme Court in the case of ***Popat Bahiru Govardhane & others vs. Special Land Acquisition Officer & another (2013) 10 SCC 765*** has held as under:

> *"16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."*

(See Martin Burn Ltd. v. Corpn. of Calcutta10, AIR p. 535, para 14 and Rohitash Kumar v. Om Prakash Sharma11.)

Reverting to the facts of the present case, as per admitted position, the services of the workman was terminated on 21.12.2001, challenged by him by filing the present industrial dispute on 28.02.2011.

So, keeping in view the above said facts as well as that the workman (now deceased) cannot derive any benefit from the facts on which he has approached the Tribunal after expiry of period three years from the date of his termination, because his services were terminated on 21.12.2001 and filed the present case on 28.02.2011 u/s 2A (2) of the Act, as such, the claim petition is barred by the period of limitation provided u/s 2A (3) of the Act, liable to be rejected.

Accordingly, the same is rejected on the ground that same is barred by period of limitation as per section 2A (3) of the Industrial Disputes Act, 1947.

Award as above.

Justice ANIL KUMAR, PRESIDING OFFICER

नई दिल्ली, 30 मई, 2023

का.आ. 900.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, हिंदुस्तान एयरोनॉटिक्स लिमिटेड, लखनऊ; मैसर्स शाह बंधु, द्वारा श्री योगेंद्र प्रसाद शाह, स्वच्छता ठेकेदार, हरजेंद्र नगर, कानपुर; मैसर्स ग्रुप-4 फैसिलिटी सर्विस, द्वारा श्री नवल कपूर, निदेशक कार्मिक, 1/97, विद्युत खंड, गोमती नगर, लखनऊ, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री उदयभान सिंह, कामगार,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 67/2011) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 29/05/2023 को प्राप्त हुआ था।

[सं. एल-42025-07-2023-120-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 30th May, 2023

S.O. 900.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 67/2011) of the Central Government Industrial Tribunal cum Labour Court–Lucknow, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Hindustan Aeronautics Limited, Lucknow ;M/s Shah Bandhu, through Shri Yogendra Prasad Shah,Sanitation Contractor, Harjendra Nagar, Kanpur ; M/s Group -4 Facilities Service, through Shri Nawal Kapoor, Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow, and Shri Udai Bhan Singh, Worker, which was received along with soft copy of the award by the Central Government on 29/05/2023.

[No. L-42025-07-2023-120 -IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT

LUCKNOW

Present: Justice ANIL KUMAR**,** Presiding Officer

I.D. No. 67/2011

BETWEEN

Udai Bhan Singh son of late Makrand Singh Ismailganj post Chinhat,
Faizabad Raod, District Lucknow.

AND

1. Hindustan Aeronautics Limited, Lucknow Division, Lucknow through its General Manager.

2. General Manager, Hindustan Aeronautics Limited, Lucknow Division, Lucknow.

3. M/s Shah Bandhu, through Sri Yogendra Prasad Shah,

Sanitation Contractor, 504, Viman Nagar, G.T. Road.

Harjendra Nagar, Kanpur.

4. M/s Group -4 Facilities Service, through Sri Nawal Kapoor, Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow.

AWARD

On 28.02.2011 the claimant/workman has filed the ID case No. 67/2011 as per the provisions of Section 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

Facts of the case:

Hindustan Aeronautics Limited, Lucknow Division (hereinafter referred to as Establishment), is a factory registered under the provisions of the Factories Act, which is situated at Faizabad Road, Lucknow and the sanitation work of the premises of the Establishment as well as Plant and Machinery installed at the factory premises is a perennial as well regular nature of job.

Establishment is an Engineering Industry and the Government has issued a notification dated 24.04.1990 under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 after the recommendation of Contract Labour Advisory Board, whereby 18 works of the Engineering Industry, which are regular or perennial in nature has been prohibited.

However, it was the prevalent practice in establishment that they employed the contract labour for sanitation work of the establishment/premises despite the fact that the sanitation work was regular in nature; and the claimant/workman was working in the establishment right from the very beginning i.e. from the date, the factory was established and continuously worked till the date of termination i.e. 21.12.2001.

As per the case workman order of termination dated 21.12.2001 by which his services in an illegal and unjustified manner was terminated, inasmuch as in establishment of the employers there were more than 100 workmen employed as such the compliance of Section 25-N of the Industrial Disputes Act was necessary but before terminating the services of the workmen, the employers have not complied with the provisions of Section 25-N of the Industrial Disputes Act.

Further, the services of the workman have been terminated by the principal employer not by the contractor and the work which were being performed by the concerned workman still exist with employers and the same is being carried out by employing new workmen on contract basis.

In the claim petition it has been pleaded that earlier the workmen's Union in Establishment i.e. Hindustan Aeronautics Karamchari Sabha, raised the dispute of the workman along with some other workmen before the State Government which, was referred for adjudication before the Industrial Tribunal (II), U.P., Lucknow, registered before Industrial Tribunal (II), U.P., Lucknow as Adj. Case No.: 126 of 2002.

However, on account of the fact that the workman along with some other workmen were not satisfied with the pairavi of the Union as such an authority letter was filed along with an application by 20 workmen amongst the concerned workman to represent the said case but the Union, filed objection that as applicants who have filed the application are not party in the said case as such they are not entitled to represent the case. By an order dated 10.03.2010, the Hon'ble Presiding Officer held that the workmen are not satisfied with the proceedings through Union, they can raise separate dispute "under the provisions of Act.

Thereafter, an application was filed by 36 workmen including the claimant/workman on 10.07.2010 before, the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow for deletion of the names of the workmen from the reference order so that they may be in position to raise fresh industrial dispute before the competent Forum and the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow after hearing the parties concerned was pleased to allow the said application except three whose names were not mentioned in reference order.

In pursuance to order dated 20.07.2010 the workman concerned along with 32 other workman filed an application before the Regional Labour Commissioner (Central), Lucknow which was registered as Case No. LKO-8(2-32)/2010: Laxmi Narain and 32 others Vs. General Manager, Hindustan Aeronautics Limited and others.

Thereafter, Regional Labour Commissioner (Central), Lucknow, called upon the parties for conciliation proceedings and in pursuance thereof Hindustan Aeronautics Limited appeared before him and filed their objections and due to the negative attitude of the employers, no settlement could be arrived between the parties.

Since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.

In view of above said factual background the present case has been filed u/s 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) with following prayer:

> *"WHEREFORE, it is most respectfully prayed that the Hon'ble Court may be pleased to declare that the action of the management in terminating the services of workman with effect from 21.12.2001 is neither legal nor justified and accordingly the workman concerned is entitled to get reinstatement in service together with entire consequential benefits including back wages and other service benefits, in the interest of justice."*

On behalf the respondent written statement has been filed on 15.05.2012 in which following preliminary objection was taken:

> *"1. That the aforesaid ID Case No.82/2011 is not maintainable as per the provisions of ID Act 1947 (as mended by ID (Amendment) Act 2010) because the same is barred by limitation U/S 2A(3) of the ID Act (Amendment 2010) which is quoted as below:*
>
> > *2A(3) "the application referred to in sub section 2 shall be made to Labour Court or Tribunal before the expiry of 3 years from the date of discharge, dismissal, retrenchment or otherwise termination service as specified in sub section 1".*

In addition to the above said facts, the respondent in its written statement also given the parawise reply to the case as set up by the claimant in his statement of claim.

Sri Adarsh Jadghari has submitted that before deciding the matter in question on merit, the question "whether the claim petition filed by the claimant on 28.02.2011 as per the provisions of section 2A (2) of the Act, aggrieved by the order of termination/retrenchment dated 21.12.2001 is barred by the period of limitation as provided u/s 2A(3) of the Act or not?"

Sri Adarsh Jadghari in support of his argument submits, admittedly as per the case of the claimant his services were terminated on 21.12.2001, aggrieved by the same he filed present industrial dispute u/s 2A (2) of the Act; however, u/s 2A (3) of the Act the period of limitation is provided for three years, from the date of retrenchment/termination, so, the present claim petition is barred by the period of limitation as provided u/s 2A (3) of the Act, liable to be dismissed.

Sri D.K. Gupta, learned counsel for claimant, rebutting the said contention has placed reliance as pleaded in the statement of claim and submits that in view of the facts as stated hereinabove especially in paragraph 27 & 28, which are quoted herein below:

> *"27. That since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.*
>
> *28. That in pursuance thereof, the workman concerned approaching the Hon'ble Tribunal for the adjudication of the industrial disputes as prevalent between the workman and the employers."*

The present claim petition filed u/s 2 (2) of the Act is maintainable and the arguments as raised by the learned counsel for respondent that same is barred by the period limitation is devoid of merit, be rejected.

I have heard the learned counsel for parties and gone through the record.

Before deciding the same it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947 in brief which are that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, upto a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words, industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but a continuous demand for fair return to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc.(***Hariprasad Vs. A.D.Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organization also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which

continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

"*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No. 24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No.24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."

Now the core question to be considered is that in view of the facts which are stated hereinabove, that admittedly the services of applicant was terminated on 21.12.2001, thereafter he has filed the present case before this Tribunal u/s 2A of the Act on 28.02.2011 on the grounds as taken by him in his claim petition, is maintainable or barred by the period of limitation as provided u/s 2A(3) of the Act.

Answer to the said question find place in the judgment passed by Hon'ble the Karnataka High Court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041***, relevant potion quoted as under:

"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right

conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.

20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:

> *"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."*

21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.

8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.

The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.

9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court,

which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.

10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)

(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)

(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)

(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and positon of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755***.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly

conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".

In the case of ***Union of India Vs. Hansoli Devo (2002) 7 SCC 273***, Hon'ble the Supreme Court observed as under:-

"9.It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."

In the case of ***Patango Kadam Vs. Prithviraj Sayajiro Yadav Deshmukh (2001) 3 SCC 594***, took the view:-

"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."

Also, Hon'ble the Supreme Court in the case of ***Popat Bahiru Govardhane & others vs. Special Land Acquisition Officer & another (2013) 10 SCC 765*** has held as under:

"16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."

(See Martin Burn Ltd. v. Corpn. of Calcutta10, AIR p. 535, para 14 and Rohitash Kumar v. Om Prakash Sharma11.)

Reverting to the facts of the present case, as per admitted position, the services of the workman was terminated on 21.12.2001, challenged by him by filing the present industrial dispute on 28.02.2011

So, keeping in view the above said facts as well as that the workman cannot derive any benefit from the facts on which he has approached the Tribunal after expiry of period three years from the date of his termination, because his services were terminated on 21.12.2001 and filed the present case on 28.02.2011 u/s 2A (2) of the Act, as such, the claim petition is barred by the period of limitation provided u/s 2A (3) of the Act, liable to be rejected.

Accordingly, the same is rejected on the ground that same is barred by period of limitation as per section 2A (3) of the Industrial Disputes Act, 1947, with liberty to the claimant to pursue its case before appropriate forum as per law.

Award as above.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 30 मई, 2023

का.आ. 901.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार प्रबंध निदेशक ,स्कूटर इंडिया लिमिटेड, सरोजिनी नगर, लखनऊ, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री माता प्रसाद, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 42/2014) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 29/05/2023 को प्राप्त हुआ था।

[सं. एल-42012/185/2012-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 30th May, 2023

S.O. 901.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 42/2014) of the Central Government Industrial Tribunal cum Labour Court–Lucknow, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Managing Director, Scooters India Limited , Sarojani Nagar, Lucknow, and Shri Mata Prasad, Worker, which was received along with soft copy of the award by the Central Government on 29/05/2023.

[No. L- 42012/185/2012-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM-LABOUR COURT, LUCKNOW

Present: Justice ANIL KUMAR**,** Presiding Officer

I.D. No. 42/2014

Ref. No. L-42012/185/2012-IR(DU) dated 21/26-05-2014

BETWEEN

Mata Prasad, S/o Late Sh. Raghubir Singh,
R/o H No. 570/669, Virat Nagar, Kasimpur Pathari,
Alambag, Lucknow

AND

The Managing Director Scooters India Limited
Sarojani Nagar, Lucknow.

AWARD

By order No. L-42012/185/2012-IR(DU) dated 21/26-05-2014 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute for adjudication with following schedule:

"**क्या कर्मकार श्री माता प्रसाद पुत्र स्व० रघुवीर सिंह को प्रबंध निदेशक, स्कूटर्स इंडिया लिमिटेड, सरोजनी नगर, लखनऊ द्वारा कर्मकार को दिनांक 22.02.1994 को नौकरी से स्वैच्छिक सेवा**

निवृत्त कर दिया जाना उचित एवं वैधानिक है? यदि नही तो कर्मकार क्या अनुतोष पाने का अधिकारी है?"

On 10.09.2014 the claimant has filed his claim petition, praying the following relief:

> *"***Wherefore, it is prayed that the illegal Voluntary Retirement is liable to party/employer be may set of the applicant-workman aside and the opposite kindly be directed reinstate applicant-workman on the post with consequential service/salary benefits and pay his arrears of salary within stipulated period with 12% interest, and/or pass such other order or direction, which this Hon'ble Tribunal may deem just and proper in the circumstances of the case. "**

On 21.03.2017 on behalf of respondent written statement (M-11) has been filed; wherein an objection has been raised by the respondent that no dispute much less an industrial dispute can exist after about 17 years of taking voluntary retirement and no relief, if any can be granted to the applicant/workman.

It has also been submitted that because the applicant/workman accepted the scheme of "Golden Shake Hand" by opting voluntary retirement and accepting all the benefits of it, therefore, there exists no dispute.

In this regard respondent place reliance on a case which similar to the present case, where an employee has challenged for release on voluntary retirement before Hon'ble High Court, Lucknow vide Writ Petition no. 1165 of 1994 Jagdish Chandra Nigam vs. Scooters India Limited, which was finally dismissed by Hon'ble High Court providing that after accepting all benefits under the VRS, the petitioner is not entitled to the reinstatement in service, as such, the VRS was Golden Hand Shake Scheme.

Moreover, it has also been contended that voluntary retirement also does not come in the purview of retrenchment.

On behalf of respondent it has also been argued that in the statement of claim, claimant has himself pleaded that he has submitted an application of Voluntary Retirement, voluntarily, no compulsion and no injustice was made to the applicant/workman in accepting his voluntary retirement and he was paid notice pay accordingly, as per Rule which govern his service condition, so, the present claim is not maintainable, liable to be dismissed.

The claimant/workman did not file any rejoinder.

Needless to mention that after filing of written statement several opportunities were granted to the workman to file rejoinder.

Thereafter, by an order dated 04.12.2018, passed by this Tribunal, the opportunity to the workman has been closed; and the matter is listed for argument.

From perusal of the order sheet the position is emerged out that since 15.02.2020 the matter is listed for hearing and none is appeared on behalf of claimant.

Moreover, on 24.02.2013, when the matter is taken up in revised list neither the workman nor his legal representative has put his appearance.

Accordingly, heard learned counsel for opposite party and perused the record.

Taking into consideration, the above said facts as well as the fact that no oral/documentary evidence has been filed on behalf of the claimant to support his claim, as such, the adjudication case is liable to be dismissed.

Because, Hon'ble High Court in the case of ***V. K. Raj Industries v. Labour Court (I) and others 1981 (29) FLR 194*** as under:

> *"It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the Court must fail. Whenever a workman raises a dispute challenging the validity of the termination of service if is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to appear or to file written statement or produce evidence, the dispute referred by the State Government cannot be answered in favour of the workman and he would not be entitled to any relief."*

In the case of ***M/s Uptron Powertronics Employees' Union, iabad through its Secretary v. Presiding Officer, Labour Court (II), Ghaziabad and others 2008 (118) FLR 1164*** Hon'ble Allahabad High Court has held as under:

> *The law has been settled by the Apex Court in case of Shanker Chakravarti v. Britannia Biscuit Co. Ltd., V.K. Raj Industries v. Labour Court and Ors., Airtech Private Limited v. State of U.P. and Ors. 1984 (49) FLR 38 and Meritech India Ltd. v. State of U.P. and Ors. 1996 FLR that in the absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."*

Hon'ble Allahabad High Court in the case of ***District Administrative Committee, U.P. P.A.C.C.S.C. Services v. Secretary-cum-G.M. District Co-operative Bank Ltd. 2010 (126) FLR 519*** has held as under:

> *"The submission is that even if the petitioner failed to lead the evidence, burden was on the shoulders of the respondent to prove the termination order as illegal. He was required to lead evidence first which he failed. A perusal of the impugned award also does not show that any evidence either oral or documentary was led by the respondent. In the case of no evidence, the reference has to be dismissed."*
>
> For the foregoing reasons, the case is dismissed and; and the workman is not entitled for any relief.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 30 मई, 2023

का.आ. 902.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, हिंदुस्तान एयरोनॉटिक्स लिमिटेड, लखनऊ; मैसर्स शाह बंधु, द्वारा श्री योगेंद्र प्रसाद शाह, स्वच्छता ठेकेदार, हरजेंद्र नगर, कानपुर ; मैसर्स ग्रुप-4 फैसिलिटी सर्विस, द्वारा श्री नवल कपूर, निदेशक कार्मिक, 1/97, विद्युत खंड, गोमती नगर, लखनऊ, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री रामेश्वर, कामगार,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 75/2011) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 29/05/2023 को प्राप्त हुआ था ।

[सं. एल-42025-07-2023-118-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 30th May, 2023

S.O. 902.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 75/2011) of the Central Government Industrial Tribunal cum Labour Court–Lucknow, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Hindustan Aeronautics Limited, Lucknow ;M/s Shah Bandhu, through Shri Yogendra Prasad Shah,Sanitation Contractor, Harjendra Nagar, Kanpur ; M/s Group -4 Facilities Service, through Shri Nawal Kapoor, Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow, and Shri Rameshwar, Worker, which was received along with soft copy of the award by the Central Government on 29/05/2023.

[No. L- 42025-07-2023-118-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT LUCKNOW

PRESENT: Justice ANIL KUMAR**,** Presiding Officer

I.D. No. 75/2011

BETWEEN

Rameshwar son of Sri Dori Lal resident of village Rahimabad,
post Chinhat District Lucknow

AND

1. Hindustan Aeronautics Limited, Lucknow Division, Lucknow through its General Manager.
2. General Manager, Hindustan Aeronautics Limited, Lucknow Division, Lucknow.
3. M/s Shah Bandhu, through Sri Yogendra Prasad Shah,
   Sanitation Contractor, 504, Viman Nagar, G.T. Road.
   Harjendra Nagar, Kanpur.
4. M/s Group -4 Facilities Service, through Sri Nawal Kapoor, Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow.

AWARD

On 28.02.2011 the claimant/workman has filed the ID case No. 75/2011 as per the provisions of Section 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

Facts of the case:

Hindustan Aeronautics Limited, Lucknow Division (hereinafter referred to as Establishment), is a factory registered under the provisions of the Factories Act, which is situated at Faizabad Road, Lucknow and the sanitation work of the premises of the Establishment as well as Plant and Machinery installed at the factory premises is a perennial as well regular nature of job.

Establishment is an Engineering Industry and the Government has issued a notification dated 24.04.1990 under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 after the recommendation of Contract Labour Advisory Board, whereby 18 works of the Engineering Industry, which are regular or perennial in nature has been prohibited.

However, it was the prevalent practice in establishment that they employed the contract labour for sanitation work of the establishment/premises despite the fact that the sanitation work was regular in nature; and the claimant/workman was working in the establishment right from the very beginning i.e. from the date, the factory was established and continuously worked till the date of termination i.e. 21.12.2001.

As per the case workman order of termination dated 21.12.2001 by which his services in an illegal and unjustified manner was terminated, inasmuch as in establishment of the employers there were more than 100 workmen employed as such the compliance of Section 25-N of the Industrial Disputes Act was necessary but before terminating the services of the workmen, the employers have not complied with the provisions of Section 25-N of the Industrial Disputes Act.

Further, the services of the workman have been terminated by the principal employer not by the contractor and the work which were being performed by the concerned workman still exist with employers and the same is being carried out by employing new workmen on contract basis.

In the claim petition it has been pleaded that earlier the workmen's Union in Establishment i.e. Hindustan Aeronautics Karamchari Sabha, raised the dispute of the workman along with some other workmen before the State Government which, was referred for adjudication before the Industrial Tribunal (II), U.P., Lucknow, registered before Industrial Tribunal (II), U.P., Lucknow as Adj. Case No.: 126 of 2002.

However, on account of the fact that the workman along with some other workmen were not satisfied with the pairavi of the Union as such an authority letter was filed along with an application by 20 workmen amongst the concerned workman to represent the said case but the Union, filed objection that as applicants who have filed the application are not party in the said case as such they are not entitled to represent the case. By an order dated 10.03.2010, the Hon'ble Presiding Officer held that the workmen are not satisfied with the proceedings through Union, they can raise separate dispute "under the provisions of Act.

Thereafter, an application was filed by 36 workmen including the claimant/workman on 10.07.2010 before, the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow for deletion of the names of the workmen from the reference order so that they may be in position to raise fresh industrial dispute before the competent Forum and the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow after hearing the parties concerned was pleased to allow the said application except three whose names were not mentioned in reference order.

In pursuance to order dated 20.07.2010 the workman concerned along with 32 other workman filed an application before the Regional Labour Commissioner (Central), Lucknow which was registered as Case No.

LKO-8(2-32)/2010: Laxmi Narain and 32 others Vs. General Manager, Hindustan Aeronautics Limited and others.

Thereafter, Regional Labour Commissioner (Central), Lucknow, called upon the parties for conciliation proceedings and in pursuance thereof Hindustan Aeronautics Limited appeared before him and filed their objections and due to the negative attitude of the employers, no settlement could be arrived between the parties.

Since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.

In view of above said factual background the present case has been filed u/s 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) with following prayer:

> *"WHEREFORE, it is most respectfully prayed that the Hon'ble Court may be pleased to declare that the action of the management in terminating the services of workman with effect from 21.12.2001 is neither legal nor justified and accordingly the workman concerned is entitled to get reinstatement in service together with entire consequential benefits including back wages and other service benefits, in the interest of justice."*

On behalf the respondent written statement has been filed on 15.05.2012 in which following preliminary objection was taken:

> *"1. That the aforesaid ID Case No.82/2011 is not maintainable as per the provisions of ID Act 1947 (as mended by ID (Amendment) Act 2010) because the same is barred by limitation U/S 2A(3) of the ID Act (Amendment 2010) which is quoted as below:*
>
> > *2A(3) "the application referred to in sub section 2 shall be made to Labour Court or Tribunal before the expiry of 3 years from the date of discharge, dismissal, retrenchment or otherwise termination service as specified in sub section 1".*

In addition to the above said facts, the respondent in its written statement also given the parawise reply to the case as set up by the claimant in his statement of claim.

Sri Adarsh Jadghari has submitted that before deciding the matter in question on merit, the question "whether the claim petition filed by the claimant on 28.02.2011 as per the provisions of section 2A (2) of the Act, aggrieved by the order of termination/retrenchment dated 21.12.2001 is barred by the period of limitation as provided u/s 2A(3) of the Act or not?"

Sri Adarsh Jadghari in support of his argument submits, admittedly as per the case of the claimant his services were terminated on 21.12.2001, aggrieved by the same he filed present industrial dispute u/s 2A (2) of the Act; however, u/s 2A (3) of the Act the period of limitation is provided for three years, from the date of retrenchment/termination, so, the present claim petition is barred by the period of limitation as provided u/s 2A (3) of the Act, liable to be dismissed.

Sri D.K. Gupta, learned counsel for claimant, rebutting the said contention has placed reliance as pleaded in the statement of claim and submits that in view of the facts as stated hereinabove especially in paragraph 27 & 28, which are quoted herein below:

> *"27. That since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.*
>
> *28. That in pursuance thereof, the workman concerned approaching the Hon'ble Tribunal for the adjudication of the industrial disputes as prevalent between the workman and the employers."*

The present claim petition filed u/s 2 (2) of the Act is maintainable and the arguments as raised by the learned counsel for respondent that same is barred by the period limitation is devoid of merit, be rejected.

I have heard the learned counsel for parties and gone through the record.

Before deciding the same it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947 in brief which are that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, upto a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words, industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but a continuous demand for fair return to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc.(***Hariprasad Vs. A.D.Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organization also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a

majority should take an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

"*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No. 24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No.24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."

Now the core question to be considered is that in view of the facts which are stated hereinabove, that admittedly the services of applicant was terminated on 21.12.2001, thereafter he has filed the present case before this Tribunal u/s 2A of the Act on 28.02.2011 on the grounds as taken by him in his claim petition, is maintainable or barred by the period of limitation as provided u/s 2A(3) of the Act.

Answer to the said question find place in the judgment passed by Hon'ble the Karnataka High Court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041***, relevant potion quoted as under:

"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to

Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.

20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:

> *"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."*

21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.

8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.

The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.

9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted

by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.

10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)

(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)

(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)

(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and positon of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755***.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly

conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".

In the case of ***Union of India Vs. Hansoli Devo (2002) 7 SCC 273***, Hon'ble the Supreme Court observed as under:-

"9.It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."

In the case of ***Patango Kadam Vs. Prithviraj Sayajiro Yadav Deshmukh (2001) 3 SCC 594***, took the view:-

"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."

Also, Hon'ble the Supreme Court in the case of ***Popat Bahiru Govardhane & others vs. Special Land Acquisition Officer & another (2013) 10 SCC 765*** has held as under:

"16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."

(See Martin Burn Ltd. v. Corpn. of Calcutta10, AIR p. 535, para 14 and Rohitash Kumar v. Om Prakash Sharma11.)

Reverting to the facts of the present case, as per admitted position, the services of the workman was terminated on 21.12.2001, challenged by him by filing the present industrial dispute on 28.02.2011.

So, keeping in view the above said facts as well as that the workman cannot derive any benefit from the facts on which he has approached the Tribunal after expiry of period three years from the date of his termination, because his services were terminated on 21.12.2001 and filed the present case on 28.02.2011 u/s 2A (2) of the Act, as such, the claim petition is barred by the period of limitation provided u/s 2A (3) of the Act, liable to be rejected.

Accordingly, the same is rejected on the ground that same is barred by period of limitation as per section 2A (3) of the Industrial Disputes Act, 1947, with liberty to the claimant to pursue its case before appropriate forum as per law.

Award as above.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 30 मई, 2023

का.आ. 903.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, हिंदुस्तान एयरोनॉटिक्स लिमिटेड, लखनऊ; मैसर्स शाह बंधु, द्वारा श्री योगेंद्र प्रसाद शाह, स्वच्छता ठेकेदार, हरजेंद्र नगर, कानपुर; मैसर्स ग्रुप-4 फैसिलिटी सर्विस, द्वारा श्री नवल कपूर, निदेशक कार्मिक, 1/97, विद्युत खंड, गोमती नगर, लखनऊ, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री तुन्नी लाल, कामगार,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 71/2011) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 29/05/2023 को प्राप्त हुआ था।

[सं. एल-42025-07-2023-117-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 30th May, 2023

S.O. 903.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 71/2011) of the Central Government Industrial Tribunal cum Labour Court–Lucknow, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Hindustan Aeronautics Limited, Lucknow ;M/s Shah Bandhu, through Shri Yogendra Prasad Shah,Sanitation Contractor, Harjendra Nagar, Kanpur ; M/s Group -4 Facilities Service, through Shri Nawal Kapoor, Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow, and Shri Tunni Lal, Worker, which was received along with soft copy of the award by the Central Government on 29/05/2023.

[No. L- 42025-07-2023-117-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT LUCKNOW

Present: Justice ANIL KUMAR**,** Presiding Officer

I.D. No. 71/2011

BETWEEN

Tunni Lal, son of late Malli Prasad,
resident of Chinhat Post Chinhat,
Faizabad Road, Lucknow

AND

1. Hindustan Aeronautics Limited, Lucknow Division, Lucknow through its General Manager.
2. General Manager, Hindustan Aeronautics Limited, Lucknow Division, Lucknow.
3. M/s Shah Bandhu, through Sri Yogendra Prasad Shah,
   Sanitation Contractor, 504, Viman Nagar, G.T. Road.
   Harjendra Nagar, Kanpur.
4. M/s Group -4 Facilities Service, through Sri Nawal Kapoor, Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow.

AWARD

On 28.02.2011 the claimant/workman has filed the ID case No. 71/2011 as per the provisions of Section 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

Facts of the case:

Hindustan Aeronautics Limited, Lucknow Division (hereinafter referred to as Establishment), is a factory registered under the provisions of the Factories Act, which is situated at Faizabad Road, Lucknow and the sanitation work of the premises of the Establishment as well as Plant and Machinery installed at the factory premises is a perennial as well regular nature of job.

Establishment is an Engineering Industry and the Government has issued a notification dated 24.04.1990 under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 after the recommendation of Contract Labour Advisory Board, whereby 18 works of the Engineering Industry, which are regular or perennial in nature has been prohibited.

However, it was the prevalent practice in establishment that they employed the contract labour for sanitation work of the establishment/premises despite the fact that the sanitation work was regular in nature; and the claimant/workman was working in the establishment right from the very beginning i.e. from the date, the factory was established and continuously worked till the date of termination i.e. 21.12.2001.

As per the case workman order of termination dated 21.12.2001 by which his services in an illegal and unjustified manner was terminated, inasmuch as in establishment of the employers there were more than 100 workmen employed as such the compliance of Section 25-N of the Industrial Disputes Act was necessary but before terminating the services of the workmen, the employers have not complied with the provisions of Section 25-N of the Industrial Disputes Act.

Further, the services of the workman have been terminated by the principal employer not by the contractor and the work which were being performed by the concerned workman still exist with employers and the same is being carried out by employing new workmen on contract basis.

In the claim petition it has been pleaded that earlier the workmen's Union in Establishment i.e. Hindustan Aeronautics Karamchari Sabha, raised the dispute of the workman along with some other workmen before the State Government which, was referred for adjudication before the Industrial Tribunal (II), U.P., Lucknow, registered before Industrial Tribunal (II), U.P., Lucknow as Adj. Case No.: 126 of 2002.

However, on account of the fact that the workman along with some other workmen were not satisfied with the pairavi of the Union as such an authority letter was filed along with an application by 20 workmen amongst the concerned workman to represent the said case but the Union, filed objection that as applicants who have filed the application are not party in the said case as such they are not entitled to represent the case. By an order dated 10.03.2010, the Hon'ble Presiding Officer held that the workmen are not satisfied with the proceedings through Union, they can raise separate dispute "under the provisions of Act.

Thereafter, an application was filed by 36 workmen including the claimant/workman on 10.07.2010 before, the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow for deletion of the names of the workmen from the reference order so that they may be in position to raise fresh industrial dispute before the competent Forum and the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow after hearing the parties concerned was pleased to allow the said application except three whose names were not mentioned in reference order.

In pursuance to order dated 20.07.2010 the workman concerned along with 32 other workman filed an application before the Regional Labour Commissioner (Central), Lucknow which was registered as Case No. LKO-8(2-32)/2010: Laxmi Narain and 32 others Vs. General Manager, Hindustan Aeronautics Limited and others.

Thereafter, Regional Labour Commissioner (Central), Lucknow, called upon the parties for conciliation proceedings and in pursuance thereof Hindustan Aeronautics Limited appeared before him and filed their objections and due to the negative attitude of the employers, no settlement could be arrived between the parties.

Since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.

In view of above said factual background the present case has been filed u/s 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) with following prayer:

"WHEREFORE, it is most respectfully prayed that the Hon'ble Court may be pleased to declare that the action of the management in terminating the services of workman with effect from 21.12.2001 is neither legal nor justified and accordingly the workman concerned is entitled to get reinstatement in service together with entire consequential benefits including back wages and other service benefits, in the interest of justice."

On behalf the respondent written statement has been filed on 15.05.2012 in which following preliminary objection was taken:

"1. That the aforesaid ID Case No.82/2011 is not maintainable as per the provisions of ID Act 1947 (as mended by ID (Amendment) Act 2010) because the same is barred by limitation U/S 2A(3) of the ID Act (Amendment 2010) which is quoted as below:

2A(3) "the application referred to in sub section 2 shall be made to Labour Court or Tribunal before the expiry of 3 years from the date of discharge, dismissal, retrenchment or otherwise termination service as specified in sub section 1".

In addition to the above said facts, the respondent in its written statement also given the parawise reply to the case as set up by the claimant in his statement of claim.

Sri Adarsh Jadghari has submitted that before deciding the matter in question on merit, the question "whether the claim petition filed by the claimant on 28.02.2011 as per the provisions of section 2A (2) of the Act, aggrieved by the order of termination/retrenchment dated 21.12.2001 is barred by the period of limitation as provided u/s 2A(3) of the Act or not?"

Sri Adarsh Jadghari in support of his argument submits, admittedly as per the case of the claimant his services were terminated on 21.12.2001, aggrieved by the same he filed present industrial dispute u/s 2A (2) of the Act; however, u/s 2A (3) of the Act the period of limitation is provided for three years, from the date of retrenchment/termination, so, the present claim petition is barred by the period of limitation as provided u/s 2A (3) of the Act, liable to be dismissed.

Sri D.K. Gupta, learned counsel for claimant, rebutting the said contention has placed reliance as pleaded in the statement of claim and submits that in view of the facts as stated hereinabove especially in paragraph 27 & 28, which are quoted herein below:

"27. That since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.

28. That in pursuance thereof, the workman concerned approaching the Hon'ble Tribunal for the adjudication of the industrial disputes as prevalent between the workman and the employers."

The present claim petition filed u/s 2 (2) of the Act is maintainable and the arguments as raised by the learned counsel for respondent that same is barred by the period limitation is devoid of merit, be rejected.

I have heard the learned counsel for parties and gone through the record.

Before deciding the same it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947 in brief which are that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for

such periods as may be specified, upto a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words, industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but a continuous demand for fair return to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc.(***Hariprasad Vs. A.D.Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organization also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

"*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those

workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No. 24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No.24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

> *"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.*
>
> *(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.*
>
> *(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."*

Now the core question to be considered is that in view of the facts which are stated hereinabove, that admittedly the services of applicant was terminated on 21.12.2001, thereafter he has filed the present case before this Tribunal u/s 2A of the Act on 28.02.2011 on the grounds as taken by him in his claim petition, is maintainable or barred by the period of limitation as provided u/s 2A(3) of the Act.

Answer to the said question find place in the judgment passed by Hon'ble the Karnataka High Court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041***, relevant potion quoted as under:

> *"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.*
>
> *20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:*
>
> > *"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."*

21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.

8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.

The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.

9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.

10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)

(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)

(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)

(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and positon of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755***.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".

In the case of ***Union of India Vs. Hansoli Devo (2002) 7 SCC 273***, Hon'ble the Supreme Court observed as under:-

"9.It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."

In the case of ***Patango Kadam Vs. Prithviraj Sayajiro Yadav Deshmukh (2001) 3 SCC 594***, took the view:-

"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."

Also, Hon'ble the Supreme Court in the case of ***Popat Bahiru Govardhane & others vs. Special Land Acquisition Officer & another (2013) 10 SCC 765*** has held as under:

"16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."

(See Martin Burn Ltd. v. Corpn. of Calcutta10, AIR p. 535, para 14 and Rohitash Kumar v. Om Prakash Sharma11.)

Reverting to the facts of the present case, as per admitted position, the services of the workman was terminated on 21.12.2001, challenged by him by filing the present industrial dispute on 28.02.2011.

So, keeping in view the above said facts as well as that the workman cannot derive any benefit from the facts on which he has approached the Tribunal after expiry of period three years from the date of his termination, because his services were terminated on 21.12.2001 and filed the present case on 28.02.2011 u/s 2A (2) of the Act, as such, the claim petition is barred by the period of limitation provided u/s 2A (3) of the Act, liable to be rejected.

Accordingly, the same is rejected on the ground that same is barred by period of limitation as per section 2A (3) of the Industrial Disputes Act, 1947, with liberty to the claimant to pursue its case before appropriate forum as per law.

Award as above.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 30 मई, 2023

का.आ. 904.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, हिंदुस्तान एयरोनॉटिक्स लिमिटेड, लखनऊ; मैसर्स शाह बंधु, द्वारा श्री योगेंद्र प्रसाद शाह, स्वच्छता ठेकेदार, हरजेंद्र नगर, कानपुर; मैसर्स ग्रुप-4 फैसिलिटी सर्विस, द्वारा श्री नवल कपूर, निदेशक कार्मिक, 1/97, विद्युत खंड, गोमती नगर, लखनऊ, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री राम सुंदर, कामगार,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या

94/2011) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 29/05/2023 को प्राप्त हुआ था ।

[सं. एल-42025-07-2023-115-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 30th May, 2023

S.O. 904.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 94/2011) of the Central Government Industrial Tribunal cum Labour Court–Lucknow, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Hindustan Aeronautics Limited, Lucknow; M/s Shah Bandhu, through Shri Yogendra Prasad Shah,Sanitation Contractor, Harjendra Nagar, Kanpur ; M/s Group -4 Facilities Service, through Shri Nawal Kapoor, Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow, and Shri Ram Sundar, Worker, which was received along with soft copy of the award by the Central Government on 29/05/2023.

[No. L-42025-07-2023-115 -IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT LUCKNOW

Present: Justice ANIL KUMAR**,** Presiding Officer

I.D. No. 94/2011

BETWEEN

Ram Sundar son of late Hari Ram Kashyap,
Village Emauna, Shrawasti,
Police Station Shrawasti District Bahraich

AND

1. Hindustan Aeronautics Limited, Lucknow Division, Lucknow through its General Manager.
2. General Manager, Hindustan Aeronautics Limited, Lucknow Division, Lucknow.
3. M/s Shah Bandhu, through Sri Yogendra Prasad Shah,
   Sanitation Contractor, 504, Viman Nagar, G.T. Road.
   Harjendra Nagar, Kanpur.
4. M/s Group -4 Facilities Service, through Sri Nawal Kapoor,
   Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow.

AWARD

On 28.02.2011 the claimant/workman has filed the ID case No. 94/2011 as per the provisions of Section 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

Facts of the case:

Hindustan Aeronautics Limited, Lucknow Division (hereinafter referred to as Establishment), is a factory registered under the provisions of the Factories Act, which is situated at Faizabad Road, Lucknow and the sanitation work of the premises of the Establishment as well as Plant and Machinery installed at the factory premises is a perennial as well regular nature of job.

Establishment is an Engineering Industry and the Government has issued a notification dated 24.04.1990 under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 after the recommendation of Contract Labour Advisory Board, whereby 18 works of the Engineering Industry, which are regular or perennial in nature has been prohibited.

However, it was the prevalent practice in establishment that they employed the contract labour for sanitation work of the establishment/premises despite the fact that the sanitation work was regular in nature; and

the claimant/workman was working in the establishment right from the very beginning i.e. from the date, the factory was established and continuously worked till the date of termination i.e. 21.12.2001.

As per the case workman order of termination dated 21.12.2001 by which his services in an illegal and unjustified manner was terminated, inasmuch as in establishment of the employers there were more than 100 workmen employed as such the compliance of Section 25-N of the Industrial Disputes Act was necessary but before terminating the services of the workmen, the employers have not complied with the provisions of Section 25-N of the Industrial Disputes Act.

Further, the services of the workman have been terminated by the principal employer not by the contractor and the work which were being performed by the concerned workman still exist with employers and the same is being carried out by employing new workmen on contract basis.

In the claim petition it has been pleaded that earlier the workmen's Union in Establishment i.e. Hindustan Aeronautics Karamchari Sabha, raised the dispute of the workman along with some other workmen before the State Government which, was referred for adjudication before the Industrial Tribunal (II), U.P., Lucknow, registered before Industrial Tribunal (II), U.P., Lucknow as Adj. Case No.: 126 of 2002.

However, on account of the fact that the workman along with some other workmen were not satisfied with the pairavi of the Union as such an authority letter was filed along with an application by 20 workmen amongst the concerned workman to represent the said case but the Union, filed objection that as applicants who have filed the application are not party in the said case as such they are not entitled to represent the case. By an order dated 10.03.2010, the Hon'ble Presiding Officer held that the workmen are not satisfied with the proceedings through Union, they can raise separate dispute "under the provisions of Act.

Thereafter, an application was filed by 36 workmen including the claimant/workman on 10.07.2010 before, the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow for deletion of the names of the workmen from the reference order so that they may be in position to raise fresh industrial dispute before the competent Forum and the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow after hearing the parties concerned was pleased to allow the said application except three whose names were not mentioned in reference order.

In pursuance to order dated 20.07.2010 the workman concerned along with 32 other workman filed an application before the Regional Labour Commissioner (Central), Lucknow which was registered as Case No. LKO-8(2-32)/2010: Laxmi Narain and 32 others Vs. General Manager, Hindustan Aeronautics Limited and others.

Thereafter, Regional Labour Commissioner (Central), Lucknow, called upon the parties for conciliation proceedings and in pursuance thereof Hindustan Aeronautics Limited appeared before him and filed their objections and due to the negative attitude of the employers, no settlement could be arrived between the parties.

Since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.

In view of above said factual background the present case has been filed u/s 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) with following prayer:

> *"WHEREFORE, it is most respectfully prayed that the Hon'ble Court may be pleased to declare that the action of the management in terminating the services of workman with effect from 21.12.2001 is neither legal nor justified and accordingly the workman concerned is entitled to get reinstatement in service together with entire consequential benefits including back wages and other service benefits, in the interest of justice."*

On behalf the respondent written statement has been filed on 15.05.2012 in which following preliminary objection was taken:

> *"1. That the aforesaid ID Case No.82/2011 is not maintainable as per the provisions of ID Act 1947 (as mended by ID (Amendment) Act 2010) because the same is barred by limitation U/S 2A(3) of the ID Act (Amendment 2010) which is quoted as below:*

2A(3) "the application referred to in sub section 2 shall be made to Labour Court or Tribunal before the expiry of 3 years from the date of discharge, dismissal, retrenchment or otherwise termination service as specified in sub section 1".

In addition to the above said facts, the respondent in its written statement also given the parawise reply to the case as set up by the claimant in his statement of claim.

Sri Adarsh Jadghari has submitted that before deciding the matter in question on merit, the question "whether the claim petition filed by the claimant on 28.02.2011 as per the provisions of section 2A (2) of the Act, aggrieved by the order of termination/retrenchment dated 21.12.2001 is barred by the period of limitation as provided u/s 2A(3) of the Act or not?"

Sri Adarsh Jadghari in support of his argument submits, admittedly as per the case of the claimant his services were terminated on 21.12.2001, aggrieved by the same he filed present industrial dispute u/s 2A (2) of the Act; however, u/s 2A (3) of the Act the period of limitation is provided for three years, from the date of retrenchment/termination, so, the present claim petition is barred by the period of limitation as provided u/s 2A (3) of the Act, liable to be dismissed.

Sri D.K. Gupta, learned counsel for claimant, rebutting the said contention has placed reliance as pleaded in the statement of claim and submits that in view of the facts as stated hereinabove especially in paragraph 27 & 28, which are quoted herein below:

"27. That since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.

28. That in pursuance thereof, the workman concerned approaching the Hon'ble Tribunal for the adjudication of the industrial disputes as prevalent between the workman and the employers."

The present claim petition filed u/s 2 (2) of the Act is maintainable and the arguments as raised by the learned counsel for respondent that same is barred by the period limitation is devoid of merit, be rejected.

I have heard the learned counsel for parties and gone through the record.

Before deciding the same it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947 in brief which are that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, upto a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words, industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but a continuous demand for fair return to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc.(***Hariprasad Vs. A.D.Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organization also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

"*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No. 24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No.24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."

Now the core question to be considered is that in view of the facts which are stated hereinabove, that admittedly the services of applicant was terminated on 21.12.2001, thereafter he has filed the present case before this Tribunal u/s 2A of the Act on 28.02.2011 on the grounds as taken by him in his claim petition, is maintainable or barred by the period of limitation as provided u/s 2A(3) of the Act.

Answer to the said question find place in the judgment passed by Hon'ble the Karnataka High Court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041***, relevant potion quoted as under:

"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.

20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:

"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."

21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.

8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.

The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.

9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.

10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)

(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)

(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)

(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the

application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and positon of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755***.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".

In the case of ***Union of India Vs. Hansoli Devo (2002) 7 SCC 273***, Hon'ble the Supreme Court observed as under:-

"9.It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."

In the case of ***Patango Kadam Vs. Prithviraj Sayajiro Yadav Deshmukh (2001) 3 SCC 594***, took the view:-

"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."

Also, Hon'ble the Supreme Court in the case of ***Popat Bahiru Govardhane & others vs. Special Land Acquisition Officer & another (2013) 10 SCC 765*** has held as under:

> *"16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."*
>
> *(See Martin Burn Ltd. v. Corpn. of Calcutta10, AIR p. 535, para 14 and Rohitash Kumar v. Om Prakash Sharma11.)*

Reverting to the facts of the present case, as per admitted position, the services of the workman was terminated on 21.12.2001, challenged by him by filing the present industrial dispute on 28.02.2011.

So, keeping in view the above said facts as well as that the workman cannot derive any benefit from the facts on which he has approached the Tribunal after expiry of period three years from the date of his termination, because his services were terminated on 21.12.2001 and filed the present case on 28.02.2011 u/s 2A (2) of the Act, as such, the claim petition is barred by the period of limitation provided u/s 2A (3) of the Act, liable to be rejected.

Accordingly, the same is rejected on the ground that same is barred by period of limitation as per section 2A (3) of the Industrial Disputes Act, 1947, with liberty to the claimant to pursue its case before appropriate forum as per law.

Award as above.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 30 मई, 2023

का.आ. 905.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, हिंदुस्तान एयरोनॉटिक्स लिमिटेड, लखनऊ; मैसर्स शाह बंधु, द्वारा श्री योगेंद्र प्रसाद शाह, स्वच्छता ठेकेदार, हरजेंद्र नगर, कानपुर ; मैसर्स ग्रुप-4 फैसिलिटी सर्विस, द्वारा श्री नवल कपूर, निदेशक कार्मिक, 1/97, विद्युत खंड, गोमती नगर, लखनऊ, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री शिव शरण, कामगार,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 69/2011) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 29/05/2023 को प्राप्त हुआ था।

[सं. एल-42025-07-2023-116- -आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 30th May, 2023

S.O. 905.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 69/2011) of the Central Government Industrial Tribunal cum Labour Court–Lucknow, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Hindustan Aeronautics Limited, Lucknow ;M/s Shah Bandhu, through Shri Yogendra Prasad Shah, Sanitation Contractor, Harjendra Nagar, Kanpur; M/s Group -4 Facilities Service, through Shri Nawal Kapoor, Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow, and Shri Shiv Sharan, Worker, which was received along with soft copy of the award by the Central Government on 29/05/2023.

[No. L-42025-07-2023-116 -IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT LUCKNOW

Present: Justice ANIL KUMAR**,** Presiding Officer

I.D. No. 69/2011

BETWEEN

Shiv Sharan son of late Ram Kishun,
Village Khajurgoan, Post Tindola, District Barabanki

AND

1. Hindustan Aeronautics Limited, Lucknow Division, Lucknow through its General Manager.
2. General Manager, Hindustan Aeronautics Limited, Lucknow Division, Lucknow.
3. M/s Shah Bandhu, through Sri Yogendra Prasad Shah,
Sanitation Contractor, 504, Viman Nagar, G.T. Road.
Harjendra Nagar, Kanpur.
4. M/s Group -4 Facilities Service, through Sri Nawal Kapoor, Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow.

AWARD

On 28.02.2011 the claimant/workman has filed the ID case No. 69/2011 as per the provisions of Section 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

Facts of the case:

Hindustan Aeronautics Limited, Lucknow Division (hereinafter referred to as Establishment), is a factory registered under the provisions of the Factories Act, which is situated at Faizabad Road, Lucknow and the sanitation work of the premises of the Establishment as well as Plant and Machinery installed at the factory premises is a perennial as well regular nature of job.

Establishment is an Engineering Industry and the Government has issued a notification dated 24.04.1990 under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 after the recommendation of Contract Labour Advisory Board, whereby 18 works of the Engineering Industry, which are regular or perennial in nature has been prohibited.

However, it was the prevalent practice in establishment that they employed the contract labour for sanitation work of the establishment/premises despite the fact that the sanitation work was regular in nature; and the claimant/workman was working in the establishment right from the very beginning i.e. from the date, the factory was established and continuously worked till the date of termination i.e. 21.12.2001.

As per the case workman order of termination dated 21.12.2001 by which his services in an illegal and unjustified manner was terminated, inasmuch as in establishment of the employers there were more than 100 workmen employed as such the compliance of Section 25-N of the Industrial Disputes Act was necessary but before terminating the services of the workmen, the employers have not complied with the provisions of Section 25-N of the Industrial Disputes Act.

Further, the services of the workman have been terminated by the principal employer not by the contractor and the work which were being performed by the concerned workman still exist with employers and the same is being carried out by employing new workmen on contract basis.

In the claim petition it has been pleaded that earlier the workmen's Union in Establishment i.e. Hindustan Aeronautics Karamchari Sabha, raised the dispute of the workman along with some other workmen before the State Government which, was referred for adjudication before the Industrial Tribunal (II), U.P., Lucknow, registered before Industrial Tribunal (II), U.P., Lucknow as Adj. Case No.: 126 of 2002.

However, on account of the fact that the workman along with some other workmen were not satisfied with the pairavi of the Union as such an authority letter was filed along with an application by 20 workmen amongst the concerned workman to represent the said case but the Union, filed objection that as applicants who

have filed the application are not party in the said case as such they are not entitled to represent the case. By an order dated 10.03.2010, the Hon'ble Presiding Officer held that the workmen are not satisfied with the proceedings through Union, they can raise separate dispute "under the provisions of Act.

Thereafter, an application was filed by 36 workmen including the claimant/workman on 10.07.2010 before, the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow for deletion of the names of the workmen from the reference order so that they may be in position to raise fresh industrial dispute before the competent Forum and the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow after hearing the parties concerned was pleased to allow the said application except three whose names were not mentioned in reference order.

In pursuance to order dated 20.07.2010 the workman concerned along with 32 other workman filed an application before the Regional Labour Commissioner (Central), Lucknow which was registered as Case No. LKO-8(2-32)/2010: Laxmi Narain and 32 others Vs. General Manager, Hindustan Aeronautics Limited and others.

Thereafter, Regional Labour Commissioner (Central), Lucknow, called upon the parties for conciliation proceedings and in pursuance thereof Hindustan Aeronautics Limited appeared before him and filed their objections and due to the negative attitude of the employers, no settlement could be arrived between the parties.

Since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.

In view of above said factual background the present case has been filed u/s 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) with following prayer:

> *"WHEREFORE, it is most respectfully prayed that the Hon'ble Court may be pleased to declare that the action of the management in terminating the services of workman with effect from 21.12.2001 is neither legal nor justified and accordingly the workman concerned is entitled to get reinstatement in service together with entire consequential benefits including back wages and other service benefits, in the interest of justice."*

On behalf the respondent written statement has been filed on 15.05.2012 in which following preliminary objection was taken:

> *"1. That the aforesaid ID Case No.82/2011 is not maintainable as per the provisions of ID Act 1947 (as mended by ID (Amendment) Act 2010) because the same is barred by limitation U/S 2A(3) of the ID Act (Amendment 2010) which is quoted as below:*
>
> > *2A(3) "the application referred to in sub section 2 shall be made to Labour Court or Tribunal before the expiry of 3 years from the date of discharge, dismissal, retrenchment or otherwise termination service as specified in sub section 1".*

In addition to the above said facts, the respondent in its written statement also given the parawise reply to the case as set up by the claimant in his statement of claim.

Sri Adarsh Jadghari has submitted that before deciding the matter in question on merit, the question "whether the claim petition filed by the claimant on 28.02.2011 as per the provisions of section 2A (2) of the Act, aggrieved by the order of termination/retrenchment dated 21.12.2001 is barred by the period of limitation as provided u/s 2A(3) of the Act or not?"

Sri Adarsh Jadghari in support of his argument submits, admittedly as per the case of the claimant his services were terminated on 21.12.2001, aggrieved by the same he filed present industrial dispute u/s 2A (2) of the Act; however, u/s 2A (3) of the Act the period of limitation is provided for three years, from the date of retrenchment/termination, so, the present claim petition is barred by the period of limitation as provided u/s 2A (3) of the Act, liable to be dismissed.

Sri D.K. Gupta, learned counsel for claimant, rebutting the said contention has placed reliance as pleaded in the statement of claim and submits that in view of the facts as stated hereinabove especially in paragraph 27 & 28, which are quoted herein below:

"27. That since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.

28. That in pursuance thereof, the workman concerned approaching the Hon'ble Tribunal for the adjudication of the industrial disputes as prevalent between the workman and the employers."

The present claim petition filed u/s 2 (2) of the Act is maintainable and the arguments as raised by the learned counsel for respondent that same is barred by the period limitation is devoid of merit, be rejected.

I have heard the learned counsel for parties and gone through the record.

Before deciding the same it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947 in brief which are that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, upto a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words, industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but a continuous demand for fair return to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc.(***Hariprasad Vs. A.D.Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organization also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

"*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No. 24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No.24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."

Now the core question to be considered is that in view of the facts which are stated hereinabove, that admittedly the services of applicant was terminated on 21.12.2001, thereafter he has filed the present case

before this Tribunal u/s 2A of the Act on 28.02.2011 on the grounds as taken by him in his claim petition, is maintainable or barred by the period of limitation as provided u/s 2A(3) of the Act.

Answer to the said question find place in the judgment passed by Hon'ble the Karnataka High Court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041***, relevant potion quoted as under:

> *"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.*
>
> *20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:*
>
> > *"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."*
>
> *21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."*

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

> *"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.*
>
> *8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main provision providing for the limitation*

would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.

The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.

9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.

10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)

(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)

(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)

(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and positon of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra***

Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

> *"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".*

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

> *"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.*
>
> *25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".*

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

> *"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".*

In the case of ***Union of India Vs. Hansoli Devo (2002) 7 SCC 273***, Hon'ble the Supreme Court observed as under:-

> *"9.It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."*

In the case of ***Patango Kadam Vs. Prithviraj Sayajiro Yadav Deshmukh (2001) 3 SCC 594***, took the view:-

> *"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."*

Also, Hon'ble the Supreme Court in the case of ***Popat Bahiru Govardhane & others vs. Special Land Acquisition Officer & another (2013) 10 SCC 765*** has held as under:

> *"16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."*

(See Martin Burn Ltd. v. Corpn. of Calcutta10, AIR p. 535, para 14 and Rohitash Kumar v. Om Prakash Sharma11.)

Reverting to the facts of the present case, as per admitted position, the services of the workman was terminated on 21.12.2001, challenged by him by filing the present industrial dispute on 28.02.2011.

So, keeping in view the above said facts as well as that the workman cannot derive any benefit from the facts on which he has approached the Tribunal after expiry of period three years from the date of his termination, because his services were terminated on 21.12.2001 and filed the present case on 28.02.2011 u/s 2A (2) of the Act, as such, the claim petition is barred by the period of limitation provided u/s 2A (3) of the Act, liable to be rejected.

Accordingly, the same is rejected on the ground that same is barred by period of limitation as per section 2A (3) of the Industrial Disputes Act, 1947, with liberty to the claimant to pursue its case before appropriate forum as per law.

Award as above.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 30 मई, 2023

का.आ. 906.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, हिंदुस्तान एयरोनॉटिक्स लिमिटेड, लखनऊ; मैसर्स शाह बंधु, द्वारा श्री योगेंद्र प्रसाद शाह, स्वच्छता ठेकेदार, हरजेंद्र नगर, कानपुर ; मैसर्स ग्रुप-4 फैसिलिटी सर्विस, द्वारा श्री नवल कपूर, निदेशक कार्मिक, 1/97, विद्युत खंड, गोमती नगर, लखनऊ, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री शिव कुमार, कामगार,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 85/2011) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 29/05/2023 को प्राप्त हुआ था ।

[सं. एल-42025-07-2023-114- -आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 30th May, 2023

S.O. 906.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 85/2011) of the Central Government Industrial Tribunal cum Labour Court–Lucknow, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Hindustan Aeronautics Limited, Lucknow ; M/s Shah Bandhu, through Shri Yogendra Prasad Shah,Sanitation Contractor, Harjendra Nagar, Kanpur ; M/s Group -4 Facilities Service, through Shri Nawal Kapoor, Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow, and Shri Shiv Kumar, Worker, which was received along with soft copy of the award by the Central Government on 29/05/2023.

[No. L-42025-07-2023-114-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT LUCKNOW

Present: Justice ANIL KUMAR Presiding Officer

I.D. No. 85/2011

BETWEEN

Shiv Kumar son of Sri Nanda, Ismailganj, Post Chinhat, Faizabad Road, Lucknow

AND

1. Hindustan Aeronautics Limited, Lucknow Division, Lucknow through its General Manager.
2. General Manager, Hindustan Aeronautics Limited, Lucknow Division, Lucknow.

3. M/s Shah Bandhu, through Sri Yogendra Prasad Shah,
Sanitation Contractor, 504, Viman Nagar, G.T. Road.
Harjendra Nagar, Kanpur.

4. M/s Group -4 Facilities Service, through Sri Nawal Kapoor,
Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow.

AWARD

On 28.02.2011 the claimant/workman has filed the ID case No. 85/2011 as per the provisions of Section 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

Facts of the case:

Hindustan Aeronautics Limited, Lucknow Division (hereinafter referred to as Establishment), is a factory registered under the provisions of the Factories Act, which is situated at Faizabad Road, Lucknow and the sanitation work of the premises of the Establishment as well as Plant and Machinery installed at the factory premises is a perennial as well regular nature of job.

Establishment is an Engineering Industry and the Government has issued a notification dated 24.04.1990 under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 after the recommendation of Contract Labour Advisory Board, whereby 18 works of the Engineering Industry, which are regular or perennial in nature has been prohibited.

However, it was the prevalent practice in establishment that they employed the contract labour for sanitation work of the establishment/premises despite the fact that the sanitation work was regular in nature; and the claimant/workman was working in the establishment right from the very beginning i.e. from the date, the factory was established and continuously worked till the date of termination i.e. 21.12.2001.

As per the case workman order of termination dated 21.12.2001 by which his services in an illegal and unjustified manner was terminated, inasmuch as in establishment of the employers there were more than 100 workmen employed as such the compliance of Section 25-N of the Industrial Disputes Act was necessary but before terminating the services of the workmen, the employers have not complied with the provisions of Section 25-N of the Industrial Disputes Act.

Further, the services of the workman have been terminated by the principal employer not by the contractor and the work which were being performed by the concerned workman still exist with employers and the same is being carried out by employing new workmen on contract basis.

In the claim petition it has been pleaded that earlier the workmen's Union in Establishment i.e. Hindustan Aeronautics Karamchari Sabha, raised the dispute of the workman along with some other workmen before the State Government which, was referred for adjudication before the Industrial Tribunal (II), U.P., Lucknow, registered before Industrial Tribunal (II), U.P., Lucknow as Adj. Case No.: 126 of 2002.

However, on account of the fact that the workman along with some other workmen were not satisfied with the pairavi of the Union as such an authority letter was filed along with an application by 20 workmen amongst the concerned workman to represent the said case but the Union, filed objection that as applicants who have filed the application are not party in the said case as such they are not entitled to represent the case. By an order dated 10.03.2010, the Hon'ble Presiding Officer held that the workmen are not satisfied with the proceedings through Union, they can raise separate dispute "under the provisions of Act.

Thereafter, an application was filed by 36 workmen including the claimant/workman on 10.07.2010 before, the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow for deletion of the names of the workmen from the reference order so that they may be in position to raise fresh industrial dispute before the competent Forum and the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow after hearing the parties concerned was pleased to allow the said application except three whose names were not mentioned in reference order.

In pursuance to order dated 20.07.2010 the workman concerned along with 32 other workman filed an application before the Regional Labour Commissioner (Central), Lucknow which was registered as Case No. LKO-8(2-32)/2010: Laxmi Narain and 32 others Vs. General Manager, Hindustan Aeronautics Limited and others.

Thereafter, Regional Labour Commissioner (Central), Lucknow, called upon the parties for conciliation proceedings and in pursuance thereof Hindustan Aeronautics Limited appeared before him and filed

their objections and due to the negative attitude of the employers, no settlement could be arrived between the parties.

Since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.

In view of above said factual background the present case has been filed u/s 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) with following prayer:

> *"WHEREFORE, it is most respectfully prayed that the Hon'ble Court may be pleased to declare that the action of the management in terminating the services of workman with effect from 21.12.2001 is neither legal nor justified and accordingly the workman concerned is entitled to get reinstatement in service together with entire consequential benefits including back wages and other service benefits, in the interest of justice."*

On behalf the respondent written statement has been filed on 15.05.2012 in which following preliminary objection was taken:

> *"1. That the aforesaid ID Case No.82/2011 is not maintainable as per the provisions of ID Act 1947 (as mended by ID (Amendment) Act 2010) because the same is barred by limitation U/S 2A(3) of the ID Act (Amendment 2010) which is quoted as below:*
>
> > *2A(3) "the application referred to in sub section 2 shall be made to Labour Court or Tribunal before the expiry of 3 years from the date of discharge, dismissal, retrenchment or otherwise termination service as specified in sub section 1".*

In addition to the above said facts, the respondent in its written statement also given the parawise reply to the case as set up by the claimant in his statement of claim.

Sri Adarsh Jadghari has submitted that before deciding the matter in question on merit, the question "whether the claim petition filed by the claimant on 28.02.2011 as per the provisions of section 2A (2) of the Act, aggrieved by the order of termination/retrenchment dated 21.12.2001 is barred by the period of limitation as provided u/s 2A(3) of the Act or not?"

Sri Adarsh Jadghari in support of his argument submits, admittedly as per the case of the claimant his services were terminated on 21.12.2001, aggrieved by the same he filed present industrial dispute u/s 2A (2) of the Act; however, u/s 2A (3) of the Act the period of limitation is provided for three years, from the date of retrenchment/termination, so, the present claim petition is barred by the period of limitation as provided u/s 2A (3) of the Act, liable to be dismissed.

Sri D.K. Gupta, learned counsel for claimant, rebutting the said contention has placed reliance as pleaded in the statement of claim and submits that in view of the facts as stated hereinabove especially in paragraph 27 & 28, which are quoted herein below:

> *"27. That since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.*
>
> *28. That in pursuance thereof, the workman concerned approaching the Hon'ble Tribunal for the adjudication of the industrial disputes as prevalent between the workman and the employers."*

The present claim petition filed u/s 2 (2) of the Act is maintainable and the arguments as raised by the learned counsel for respondent that same is barred by the period limitation is devoid of merit, be rejected.

I have heard the learned counsel for parties and gone through the record.

Before deciding the same it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947 in brief which are that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, upto a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words, industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but a continuous demand for fair return to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc.(***Hariprasad Vs. A.D.Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organization also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

"*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected

with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No. 24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No.24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."

Now the core question to be considered is that in view of the facts which are stated hereinabove, that admittedly the services of applicant was terminated on 21.12.2001, thereafter he has filed the present case before this Tribunal u/s 2A of the Act on 28.02.2011 on the grounds as taken by him in his claim petition, is maintainable or barred by the period of limitation as provided u/s 2A(3) of the Act.

Answer to the said question find place in the judgment passed by Hon'ble the Karnataka High Court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041***, relevant potion quoted as under:

"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.

20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:

"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language

of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."

21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.

8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.

The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.

9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.

10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As

such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)

(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)

(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)

(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and positon of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755***.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".

In the case of ***Union of India Vs. Hansoli Devo (2002) 7 SCC 273***, Hon'ble the Supreme Court observed as under:-

"9.It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."

In the case of ***Patango Kadam Vs. Prithviraj Sayajiro Yadav Deshmukh (2001) 3 SCC 594***, took the view:-

"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."

Also, Hon'ble the Supreme Court in the case of ***Popat Bahiru Govardhane & others vs. Special Land Acquisition Officer & another (2013) 10 SCC 765*** has held as under:

"16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."

(See Martin Burn Ltd. v. Corpn. of Calcutta10, AIR p. 535, para 14 and Rohitash Kumar v. Om Prakash Sharma11.)

Reverting to the facts of the present case, as per admitted position, the services of the workman was terminated on 21.12.2001, challenged by him by filing the present industrial dispute on 28.02.2011.

So, keeping in view the above said facts as well as that the workman cannot derive any benefit from the facts on which he has approached the Tribunal after expiry of period three years from the date of his termination, because his services were terminated on 21.12.2001 and filed the present case on 28.02.2011 u/s 2A (2) of the Act, as such, the claim petition is barred by the period of limitation provided u/s 2A (3) of the Act, liable to be rejected.

Accordingly, the same is rejected on the ground that same is barred by period of limitation as per section 2A (3) of the Industrial Disputes Act, 1947, with liberty to the claimant to pursue its case before appropriate forum as per law.

Award as above.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 30 मई, 2023

का.आ. 907.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, हिंदुस्तान एयरोनॉटिक्स लिमिटेड, लखनऊ; मैसर्स शाह बंधु, द्वारा श्री योगेंद्र प्रसाद शाह, स्वच्छता ठेकेदार, हरजेंद्र नगर, कानपुर ; मैसर्स ग्रुप-4 फैसिलिटी सर्विस, द्वारा श्री नवल कपूर, निदेशक कार्मिक, 1/97, विद्युत खंड, गोमती नगर, लखनऊ, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री हरि लाल, कामगार,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 76/2011) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 29/05/2023 को प्राप्त हुआ था।

[सं. एल-42025-07-2023-112-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 30th May, 2023

S.O. 907.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 76/2011) of the Central Government Industrial Tribunal cum Labour Court–Lucknow, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Hindustan Aeronautics Limited, Lucknow ;M/s Shah Bandhu, through Shri Yogendra Prasad Shah,Sanitation Contractor, Harjendra Nagar, Kanpur ; M/s Group -4 Facilities Service, through Shri Nawal Kapoor, Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow, and Shri Hari lal, Worker, which was received along with soft copy of the award by the Central Government on 29/05/2023.

[No. L- 42025-07-2023-112-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT LUCKNOW

Present: Justice ANIL KUMAR**,** Presiding Officer

I.D. No. 76/2011

BETWEEN

Hari Lal, son of late Kallu,
resident of village Nizampur Mallahaur,
Post Chinhat, District, Lucknow.

AND

1. Hindustan Aeronautics Limited, Lucknow Division, Lucknow through its General Manager.
2. General Manager, Hindustan Aeronautics Limited, Lucknow Division, Lucknow.
3. M/s Shah Bandhu, through Sri Yogendra Prasad Shah,
   Sanitation Contractor, 504, Viman Nagar, G.T. Road.
   Harjendra Nagar, Kanpur.
4. M/s Group -4 Facilities Service, through Sri Nawal Kapoor, Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow.

AWARD

On 28.02.2011 the claimant/workman has filed the ID case No. 76/2011 as per the provisions of Section 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

Facts of the case:

Hindustan Aeronautics Limited, Lucknow Division (hereinafter referred to as Establishment), is a factory registered under the provisions of the Factories Act, which is situated at Faizabad Road, Lucknow and the sanitation work of the premises of the Establishment as well as Plant and Machinery installed at the factory premises is a perennial as well regular nature of job.

Establishment is an Engineering Industry and the Government has issued a notification dated 24.04.1990 under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 after the recommendation of Contract Labour Advisory Board, whereby 18 works of the Engineering Industry, which are regular or perennial in nature has been prohibited.

However, it was the prevalent practice in establishment that they employed the contract labour for sanitation work of the establishment/premises despite the fact that the sanitation work was regular in nature; and the claimant/workman was working in the establishment right from the very beginning i.e. from the date, the factory was established and continuously worked till the date of termination i.e. 21.12.2001.

As per the case workman order of termination dated 21.12.2001 by which his services in an illegal and unjustified manner was terminated, inasmuch as in establishment of the employers there were more than 100 workmen employed as such the compliance of Section 25-N of the Industrial Disputes Act was necessary but before terminating the services of the workmen, the employers have not complied with the provisions of Section 25-N of the Industrial Disputes Act.

Further, the services of the workman have been terminated by the principal employer not by the contractor and the work which were being performed by the concerned workman still exist with employers and the same is being carried out by employing new workmen on contract basis.

In the claim petition it has been pleaded that earlier the workmen's Union in Establishment i.e. Hindustan Aeronautics Karamchari Sabha, raised the dispute of the workman along with some other workmen before the State Government which, was referred for adjudication before the Industrial Tribunal (II), U.P., Lucknow, registered before Industrial Tribunal (II), U.P., Lucknow as Adj. Case No.: 126 of 2002.

However, on account of the fact that the workman along with some other workmen were not satisfied with the pairavi of the Union as such an authority letter was filed along with an application by 20 workmen amongst the concerned workman to represent the said case but the Union, filed objection that as applicants who have filed the application are not party in the said case as such they are not entitled to represent the case. By an order dated 10.03.2010, the Hon'ble Presiding Officer held that the workmen are not satisfied with the proceedings through Union, they can raise separate dispute "under the provisions of Act.

Thereafter, an application was filed by 36 workmen including the claimant/workman on 10.07.2010 before, the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow for deletion of the names of the workmen from the reference order so that they may be in position to raise fresh industrial dispute before the competent Forum and the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow after hearing the parties concerned was pleased to allow the said application except three whose names were not mentioned in reference order.

In pursuance to order dated 20.07.2010 the workman concerned along with 32 other workman filed an application before the Regional Labour Commissioner (Central), Lucknow which was registered as Case No. LKO-8(2-32)/2010: Laxmi Narain and 32 others Vs. General Manager, Hindustan Aeronautics Limited and others.

Thereafter, Regional Labour Commissioner (Central), Lucknow, called upon the parties for conciliation proceedings and in pursuance thereof Hindustan Aeronautics Limited appeared before him and filed their objections and due to the negative attitude of the employers, no settlement could be arrived between the parties.

Since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.

In view of above said factual background the present case has been filed u/s 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) with following prayer:

"WHEREFORE, it is most respectfully prayed that the Hon'ble Court may be pleased to declare that the action of the management in terminating the services of workman with effect from 21.12.2001 is neither legal nor justified and accordingly the workman concerned is entitled to get reinstatement in service together with entire consequential benefits including back wages and other service benefits, in the interest of justice."

On behalf the respondent written statement has been filed on 15.05.2012 in which following preliminary objection was taken:

"1. That the aforesaid ID Case No.82/2011 is not maintainable as per the provisions of ID Act 1947 (as mended by ID (Amendment) Act 2010) because the same is barred by limitation U/S 2A(3) of the ID Act (Amendment 2010) which is quoted as below:

> *2A(3) "the application referred to in sub section 2 shall be made to Labour Court or Tribunal before the expiry of 3 years from the date of discharge, dismissal, retrenchment or otherwise termination service as specified in sub section 1".*

In addition to the above said facts, the respondent in its written statement also given the parawise reply to the case as set up by the claimant in his statement of claim.

Sri Adarsh Jadghari has submitted that before deciding the matter in question on merit, the question "whether the claim petition filed by the claimant on 28.02.2011 as per the provisions of section 2A (2) of the Act, aggrieved by the order of termination/retrenchment dated 21.12.2001 is barred by the period of limitation as provided u/s 2A(3) of the Act or not?"

Sri Adarsh Jadghari in support of his argument submits, admittedly as per the case of the claimant his services were terminated on 21.12.2001, aggrieved by the same he filed present industrial dispute u/s 2A (2) of the Act; however, u/s 2A (3) of the Act the period of limitation is provided for three years, from the date of retrenchment/termination, so, the present claim petition is barred by the period of limitation as provided u/s 2A (3) of the Act, liable to be dismissed.

Sri D.K. Gupta, learned counsel for claimant, rebutting the said contention has placed reliance as pleaded in the statement of claim and submits that in view of the facts as stated hereinabove especially in paragraph 27 & 28, which are quoted herein below:

"27. That since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.

28. That in pursuance thereof, the workman concerned approaching the Hon'ble Tribunal for the adjudication of the industrial disputes as prevalent between the workman and the employers."

The present claim petition filed u/s 2 (2) of the Act is maintainable and the arguments as raised by the learned counsel for respondent that same is barred by the period limitation is devoid of merit, be rejected.

I have heard the learned counsel for parties and gone through the record.

Before deciding the same it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947 in brief which are that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, upto a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words, industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but a continuous demand for fair return to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc.(***Hariprasad Vs. A.D.Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organization also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

"*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute*-

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No. 24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No.24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."

Now the core question to be considered is that in view of the facts which are stated hereinabove, that admittedly the services of applicant was terminated on 21.12.2001, thereafter he has filed the present case before this Tribunal u/s 2A of the Act on 28.02.2011 on the grounds as taken by him in his claim petition, is maintainable or barred by the period of limitation as provided u/s 2A(3) of the Act.

Answer to the said question find place in the judgment passed by Hon'ble the Karnataka High Court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041***, relevant potion quoted as under:

"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.

20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:

"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."

21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not

have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.

8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.

The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.

9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.

10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)

(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)

(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)

(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and positon of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755***.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".

In the case of ***Union of India Vs. Hansoli Devo (2002) 7 SCC 273***, Hon'ble the Supreme Court observed as under:-

"9.It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open

to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."

In the case of ***Patango Kadam Vs. Prithviraj Sayajiro Yadav Deshmukh (2001) 3 SCC 594***, took the view:-

"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."

Also, Hon'ble the Supreme Court in the case of ***Popat Bahiru Govardhane & others vs. Special Land Acquisition Officer & another (2013) 10 SCC 765*** has held as under:

"16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."

(See Martin Burn Ltd. v. Corpn. of Calcutta10, AIR p. 535, para 14 and Rohitash Kumar v. Om Prakash Sharma11.)

Reverting to the facts of the present case, as per admitted position, the services of the workman was terminated on 21.12.2001, challenged by him by filing the present industrial dispute on 28.02.2011.

So, keeping in view the above said facts as well as that the workman cannot derive any benefit from the facts on which he has approached the Tribunal after expiry of period three years from the date of his termination, because his services were terminated on 21.12.2001 and filed the present case on 28.02.2011 u/s 2A (2) of the Act, as such, the claim petition is barred by the period of limitation provided u/s 2A (3) of the Act, liable to be rejected.

Accordingly, the same is rejected on the ground that same is barred by period of limitation as per section 2A (3) of the Industrial Disputes Act, 1947, with liberty to the claimant to pursue its case before appropriate forum as per law.

Award as above.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 30 मई, 2023

का.आ. 908.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, हिंदुस्तान एयरोनॉटिक्स लिमिटेड, लखनऊ; मैसर्स शाह बंधु, द्वारा श्री योगेंद्र प्रसाद शाह, स्वच्छता ठेकेदार, हरजेंद्र नगर, कानपुर ; मैसर्स ग्रुप-4 फैसिलिटी सर्विस, द्वारा श्री नवल कपूर, निदेशक कार्मिक, 1/97, विद्युत खंड, गोमती नगर, लखनऊ, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री रामू , कामगार,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 79/2011) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 29/05/2023 को प्राप्त हुआ था।

[सं. एल-42025-07-2023-123-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 30th May, 2023

S.O. 908.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 79/2011) of the Central Government Industrial Tribunal cum Labour Court–Lucknow, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Hindustan Aeronautics Limited, Lucknow ;M/s Shah Bandhu, through Shri Yogendra Prasad Shah,Sanitation Contractor, Harjendra Nagar, Kanpur ; M/s Group -4 Facilities Service, through Shri Nawal Kapoor, Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow, and Shri Ramu,Worker, which was received along with soft copy of the award by the Central Government on 29/05/2023.

[No. L- 42025-07-2023-123-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT LUCKNOW

Present: Justice ANIL KUMAR**,** Presiding Officer

I.D. No. 79/2011

BETWEEN

Ramu, son of Sri Hazari Lal, village Ismailganj,
Post Chinhat Faizabad Road, District Lucknow.

AND

1. Hindustan Aeronautics Limited, Lucknow Division, Lucknow through its General Manager.
2. General Manager, Hindustan Aeronautics Limited, Lucknow Division, Lucknow.
3. M/s Shah Bandhu, through Sri Yogendra Prasad Shah,
Sanitation Contractor, 504, Viman Nagar, G.T. Road.
Harjendra Nagar, Kanpur.
4. M/s Group -4 Facilities Service, through Sri Nawal Kapoor, Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow.

AWARD

On 28.02.2011 the claimant/workman has filed the ID case No. 79/2011 as per the provisions of Section 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

Facts of the case:

Hindustan Aeronautics Limited, Lucknow Division (hereinafter referred to as Establishment), is a factory registered under the provisions of the Factories Act, which is situated at Faizabad Road, Lucknow and the sanitation work of the premises of the Establishment as well as Plant and Machinery installed at the factory premises is a perennial as well regular nature of job.

Establishment is an Engineering Industry and the Government has issued a notification dated 24.04.1990 under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 after the recommendation of Contract Labour Advisory Board, whereby 18 works of the Engineering Industry, which are regular or perennial in nature has been prohibited.

However, it was the prevalent practice in establishment that they employed the contract labour for sanitation work of the establishment/premises despite the fact that the sanitation work was regular in nature; and the claimant/workman was working in the establishment right from the very beginning i.e. from the date, the factory was established and continuously worked till the date of termination i.e. 21.12.2001.

As per the case workman order of termination dated 21.12.2001 by which his services in an illegal and unjustified manner was terminated, inasmuch as in establishment of the employers there were more than 100 workmen employed as such the compliance of Section 25-N of the Industrial Disputes Act was necessary but before terminating the services of the workmen, the employers have not complied with the provisions of Section 25-N of the Industrial Disputes Act.

Further, the services of the workman have been terminated by the principal employer not by the contractor and the work which were being performed by the concerned workman still exist with employers and the same is being carried out by employing new workmen on contract basis.

In the claim petition it has been pleaded that earlier the workmen’s Union in Establishment i.e. Hindustan Aeronautics Karamchari Sabha, raised the dispute of the workman along with some other workmen

before the State Government which, was referred for adjudication before the Industrial Tribunal (II), U.P., Lucknow, registered before Industrial Tribunal (II), U.P., Lucknow as Adj. Case No.: 126 of 2002.

However, on account of the fact that the workman along with some other workmen were not satisfied with the pairavi of the Union as such an authority letter was filed along with an application by 20 workmen amongst the concerned workman to represent the said case but the Union, filed objection that as applicants who have filed the application are not party in the said case as such they are not entitled to represent the case. By an order dated 10.03.2010, the Hon'ble Presiding Officer held that the workmen are not satisfied with the proceedings through Union, they can raise separate dispute "under the provisions of Act.

Thereafter, an application was filed by 36 workmen including the claimant/workman on 10.07.2010 before, the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow for deletion of the names of the workmen from the reference order so that they may be in position to raise fresh industrial dispute before the competent Forum and the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow after hearing the parties concerned was pleased to allow the said application except three whose names were not mentioned in reference order.

In pursuance to order dated 20.07.2010 the workman concerned along with 32 other workman filed an application before the Regional Labour Commissioner (Central), Lucknow which was registered as Case No. LKO-8(2-32)/2010: Laxmi Narain and 32 others Vs. General Manager, Hindustan Aeronautics Limited and others.

Thereafter, Regional Labour Commissioner (Central), Lucknow, called upon the parties for conciliation proceedings and in pursuance thereof Hindustan Aeronautics Limited appeared before him and filed their objections and due to the negative attitude of the employers, no settlement could be arrived between the parties.

Since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.

In view of above said factual background the present case has been filed u/s 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) with following prayer:

> *"WHEREFORE, it is most respectfully prayed that the Hon'ble Court may be pleased to declare that the action of the management in terminating the services of workman with effect from 21.12.2001 is neither legal nor justified and accordingly the workman concerned is entitled to get reinstatement in service together with entire consequential benefits including back wages and other service benefits, in the interest of justice."*

On behalf the respondent written statement has been filed on 15.05.2012 in which following preliminary objection was taken:

> *"1. That the aforesaid ID Case No.82/2011 is not maintainable as per the provisions of ID Act 1947 (as mended by ID (Amendment) Act 2010) because the same is barred by limitation U/S 2A(3) of the ID Act (Amendment 2010) which is quoted as below:*
>
> > *2A(3) "the application referred to in sub section 2 shall be made to Labour Court or Tribunal before the expiry of 3 years from the date of discharge, dismissal, retrenchment or otherwise termination service as specified in sub section 1".*

In addition to the above said facts, the respondent in its written statement also given the parawise reply to the case as set up by the claimant in his statement of claim.

Sri Adarsh Jadghari has submitted that before deciding the matter in question on merit, the question "whether the claim petition filed by the claimant on 28.02.2011 as per the provisions of section 2A (2) of the Act, aggrieved by the order of termination/retrenchment dated 21.12.2001 is barred by the period of limitation as provided u/s 2A(3) of the Act or not?"

Sri Adarsh Jadghari in support of his argument submits, admittedly as per the case of the claimant his services were terminated on 21.12.2001, aggrieved by the same he filed present industrial dispute u/s 2A (2) of the Act; however, u/s 2A (3) of the Act the period of limitation is provided for three years, from the date of retrenchment/termination, so, the present claim petition is barred by the period of limitation as provided u/s 2A (3) of the Act, liable to be dismissed.

Sri D.K. Gupta, learned counsel for claimant, rebutting the said contention has placed reliance as pleaded in the statement of claim and submits that in view of the facts as stated hereinabove especially in paragraph 27 & 28, which are quoted herein below:

> *"27. That since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.*
>
> *28. That in pursuance thereof, the workman concerned approaching the Hon'ble Tribunal for the adjudication of the industrial disputes as prevalent between the workman and the employers."*

The present claim petition filed u/s 2 (2) of the Act is maintainable and the arguments as raised by the learned counsel for respondent that same is barred by the period limitation is devoid of merit, be rejected.

I have heard the learned counsel for parties and gone through the record.

Before deciding the same it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947 in brief which are that Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, upto a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words, industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but a continuous demand for fair return to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc.(***Hariprasad Vs. A.D.Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organization also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece

of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

"*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No. 24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No.24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."

Now the core question to be considered is that in view of the facts which are stated hereinabove, that admittedly the services of applicant was terminated on 21.12.2001, thereafter he has filed the present case before this Tribunal u/s 2A of the Act on 28.02.2011 on the grounds as taken by him in his claim petition, is maintainable or barred by the period of limitation as provided u/s 2A(3) of the Act.

Answer to the said question find place in the judgment passed by Hon'ble the Karnataka High Court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041***, relevant potion quoted as under:

> *"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.*
>
> *20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:*
>
> > *"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."*
>
> *21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."*

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

> *"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.*
>
> *8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main*

provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.

The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.

9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.

10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)

(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)

(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)

(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/ RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and positon of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said

proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755***.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

> *"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".*

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

> *"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.*
>
> *25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".*

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

> *"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".*

In the case of ***Union of India Vs. Hansoli Devo (2002) 7 SCC 273***, Hon'ble the Supreme Court observed as under:-

> *"9.It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."*

In the case of ***Patango Kadam Vs. Prithviraj Sayajiro Yadav Deshmukh (2001) 3 SCC 594***, took the view:-

> *"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."*

Also, Hon'ble the Supreme Court in the case of ***Popat Bahiru Govardhane & others vs. Special Land Acquisition Officer & another (2013) 10 SCC 765*** has held as under:

> *"16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which*

means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."

(See Martin Burn Ltd. v. Corpn. of Calcutta10, AIR p. 535, para 14 and Rohitash Kumar v. Om Prakash Sharma11.)

Reverting to the facts of the present case, as per admitted position, the services of the workman was terminated on 21.12.2001, challenged by him by filing the present industrial dispute on 28.02.2011

So, keeping in view the above said facts as well as that the workman cannot derive any benefit from the facts on which he has approached the Tribunal after expiry of period three years from the date of his termination, because his services were terminated on 21.12.2001 and filed the present case on 28.02.2011 u/s 2A (2) of the Act, as such, the claim petition is barred by the period of limitation provided u/s 2A (3) of the Act, liable to be rejected.

Accordingly, the same is rejected on the ground that same is barred by period of limitation as per section 2A (3) of the Industrial Disputes Act, 1947, with liberty to the claimant to pursue its case before appropriate forum as per law.

Award as above.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 30 मई, 2023

का.आ. 909.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, हिंदुस्तान एयरोनॉटिक्स लिमिटेड, कोरवा डिवीजन, कोरवा, अमेठी, के प्रबंधतंत्र के संबद्ध नियोजकों और महासचिव, हिन्द मजदूर सभा, आर्य नगर, लखनऊ (उ.प्र.), के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 105/2021) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 27/05/2023 को प्राप्त हुआ था।

[सं. एल-42011/100/2021-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 30th May, 2023

S.O. 909.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 105/2021) of the Central Government Industrial Tribunal cum Labour Court–Lucknow, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Hindustan Aeronautics Ltd., Korwa Division, Korwa, Amethi, and The General Secretary, Hind Mazdoor Sabha, Arya Nagar, Lucknow (U.P), which was received along with soft copy of the award by the Central Government on 27/05/2023.

[No. L- 42011/100/2021-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

Present: Justice ANIL KUMAR**,** Presiding Officer

I.D. No. 105/2021

Ref. No. L-42011/100/2021-IR(DU) dated 30.11.2021

BETWEEN

The General Secretary, Hind Mazdoor Sabha, UP

25/28, Union Bhawan, Arya Nagar, Lucknow – 26004.

AND

The General Manager
Hindustan Aeronautics Ltd., Korwa Division
Korwa, Amethi -227405.

AWARD

By order No. L-42011/100/2021-IR(DU) dated 30.11.2021 the present industrial dispute has been referred for adjudication to this Tribunal in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 the Industrial Disputes Act, 1947 (14 of 1947) by the Central Government, with following schedule:

> *"***Whether the issue raised by Hind Mazdoor Sabha, UP vide letter dated 27.02.2018 and 17.12.2020 against the management of HAL, Korwa that employment of direct casual workers are being shifted under various contractors is proper, legal and justified? If yes, to what reliefs the concerned workers are entitled to and what other direction(s), if any, is necessary in this matter?"**

Accordingly, an industrial dispute No. 105/2021 has been registered on 14.12.2021.

From the perusal of record, the position which emerge out is that the till date the claimant/workmen's union has not filed any statement of claim.

Moreover, as a matter of fact and record, workmen's union or its authorized representative has not turned up before this Tribunal nor has filed any statement of claim, till date.

Findings & Conclusion:

Taking into consideration the fact that till date no statement of claim has been filed by the claimant/workmen's union in order to establish its claim as per the reference dated 30.11.2021.

So in view of the said facts, as well as the law laid by the Hon'ble High Court in the case of *V. K. Raj Industries v. Labour Court (I) and others 1981 (29) FLR 194* as under:

> *"It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the Court must fail. Whenever a workman raises a dispute challenging the validity of the termination of service if is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to appear or to file written statement or produce evidence, the dispute referred by the State Government cannot be answered in favour of the workman and he would not be entitled to any relief."*

In the case of *M/s Uptron Powertronics Employees' Union, Ghaziabad through its Secretary v. Presiding Officer, Labour Court (II), Ghaziabad and others 2008 (118) FLR 1164* Hon'ble Allahabad High Court has held as under:

> *"The law has been settled by the Apex Court in case of Shanker Chakravarti v. Britannia Biscuit Co. Ltd., V.K. Raj Industries v. Labour Court and Ors., Airtech Private Limited v. State of U.P. and Ors. 1984 (49) FLR 38 and Meritech India Ltd. v. State of U.P. and Ors. 1996 FLR that in the absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."*

And by the Hon'ble Allahabad High Court in the case of *District Administrative Committee, U.P. P.A.C.C.S.C. Services v. Secretary-cum-G.M. District Co-operative Bank Ltd. 2010 (126) FLR 519;* wherein it has been held as under:

> *"The submission is that even if the petitioner failed to lead the evidence, burden was on the shoulders of the respondent to prove the termination order as illegal. He was required to lead evidence first which he failed. A perusal of the impugned award also does not show that any evidence either oral or documentary was led by the respondent. In the case of no evidence, the reference has to be dismissed."*

As the workmen's union has not filed any statement of claim/oral/documentary evidence, so the present case is liable to be dismissed.

For the foregoing reasons, the case is dismissed and; and the workman is not entitled for any relief.

Award as above.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 30 मई, 2023

का.आ. 910.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, हिंदुस्तान एयरोनॉटिक्स लिमिटेड, लखनऊ; मैसर्स शाह बंधु, द्वारा श्री योगेंद्र प्रसाद शाह, स्वच्छता ठेकेदार, हरजेंद्र नगर, कानपुर ; मैसर्स ग्रुप-4 फैसिलिटी सर्विस, द्वारा श्री नवल कपूर, निदेशक कार्मिक, 1/97, विद्युत खंड, गोमती नगर, लखनऊ, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री ननकाऊ सिंह, कामगार,के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 66/2011) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 29/05/2023 को प्राप्त हुआ था।

[सं. एल-42025-07-2023-119-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 30th May, 2023

S.O. 910.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 66/2011) of the Central Government Industrial Tribunal cum Labour Court–Lucknow, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Hindustan Aeronautics Limited, Lucknow ;M/s Shah Bandhu, through Shri Yogendra Prasad Shah,Sanitation Contractor, Harjendra Nagar, Kanpur ; M/s Group -4 Facilities Service, through Shri Nawal Kapoor, Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow, and Shri Nankau Singh, Worker, which was received along with soft copy of the award by the Central Government on 29/05/2023.

[No. L- 42025-07-2023-119-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT LUCKNOW

Present: Justice ANIL KUMAR**,** Presiding Officer

I.D. No. 66/2011

BETWEEN

Nankau Singh son of late Mahaveer Singh,
resident of Ismailganj, Post Chinhat,
Faizabad Raod, District Lucknow

AND

1. Hindustan Aeronautics Limited, Lucknow Division, Lucknow through its General Manager.
2. General Manager, Hindustan Aeronautics Limited, Lucknow Division, Lucknow.
3. M/s Shah Bandhu, through Sri Yogendra Prasad Shah,
   Sanitation Contractor, 504, Viman Nagar, G.T. Road.

Harjendra Nagar, Kanpur.

4. M/s Group -4 Facilities Service, through Sri Nawal Kapoor, Director Personnel, 1/97, Vidyut Khand, Gomti Nagar, Lucknow.

AWARD

On 28.02.2011 the claimant/workman has filed the ID case No. 66/2011 as per the provisions of Section 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

Facts of the case:

Hindustan Aeronautics Limited, Lucknow Division (hereinafter referred to as Establishment), is a factory registered under the provisions of the Factories Act, which is situated at Faizabad Road, Lucknow and the sanitation work of the premises of the Establishment as well as Plant and Machinery installed at the factory premises is a perennial as well regular nature of job.

Establishment is an Engineering Industry and the Government has issued a notification dated 24.04.1990 under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 after the recommendation of Contract Labour Advisory Board, whereby 18 works of the Engineering Industry, which are regular or perennial in nature has been prohibited.

However, it was the prevalent practice in establishment that they employed the contract labour for sanitation work of the establishment/premises despite the fact that the sanitation work was regular in nature; and the claimant/workman was working in the establishment right from the very beginning i.e. from the date, the factory was established and continuously worked till the date of termination i.e. 21.12.2001.

As per the case workman order of termination dated 21.12.2001 by which his services in an illegal and unjustified manner was terminated, inasmuch as in establishment of the employers there were more than 100 workmen employed as such the compliance of Section 25-N of the Industrial Disputes Act was necessary but before terminating the services of the workmen, the employers have not complied with the provisions of Section 25-N of the Industrial Disputes Act.

Further, the services of the workman have been terminated by the principal employer not by the contractor and the work which were being performed by the concerned workman still exist with employers and the same is being carried out by employing new workmen on contract basis.

In the claim petition it has been pleaded that earlier the workmen's Union in Establishment i.e. Hindustan Aeronautics Karamchari Sabha, raised the dispute of the workman along with some other workmen before the State Government which, was referred for adjudication before the Industrial Tribunal (II), U.P., Lucknow, registered before Industrial Tribunal (II), U.P., Lucknow as Adj. Case No.: 126 of 2002.

However, on account of the fact that the workman along with some other workmen were not satisfied with the pairavi of the Union as such an authority letter was filed along with an application by 20 workmen amongst the concerned workman to represent the said case but the Union, filed objection that as applicants who have filed the application are not party in the said case as such they are not entitled to represent the case. By an order dated 10.03.2010, the Hon'ble Presiding Officer held that the workmen are not satisfied with the proceedings through Union, they can raise separate dispute "under the provisions of Act.

Thereafter, an application was filed by 36 workmen including the claimant/workman on 10.07.2010 before, the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow for deletion of the names of the workmen from the reference order so that they may be in position to raise fresh industrial dispute before the competent Forum and the Hon'ble Presiding Officer, Industrial Tribunal (2), U.P., Lucknow after hearing the parties concerned was pleased to allow the said application except three whose names were not mentioned in reference order.

In pursuance to order dated 20.07.2010 the workman concerned along with 32 other workman filed an application before the Regional Labour Commissioner (Central), Lucknow which was registered as Case No. LKO-8(2-32)/2010: Laxmi Narain and 32 others Vs. General Manager, Hindustan Aeronautics Limited and others.

Thereafter, Regional Labour Commissioner (Central), Lucknow, called upon the parties for conciliation proceedings and in pursuance thereof Hindustan Aeronautics Limited appeared before him and filed

their objections and due to the negative attitude of the employers, no settlement could be arrived between the parties.

Since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.

In view of above said factual background the present case has been filed u/s 2A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) with following prayer:

> *"WHEREFORE, it is most respectfully prayed that the Hon'ble Court may be pleased to declare that the action of the management in terminating the services of workman with effect from 21.12.2001 is neither legal nor justified and accordingly the workman concerned is entitled to get reinstatement in service together with entire consequential benefits including back wages and other service benefits, in the interest of justice."*

On behalf the respondent written statement has been filed on 15.05.2012 in which following preliminary objection was taken:

> *"1. That the aforesaid ID Case No.82/2011 is not maintainable as per the provisions of ID Act 1947 (as mended by ID (Amendment) Act 2010) because the same is barred by limitation U/S 2A(3) of the ID Act (Amendment 2010) which is quoted as below:*
>
> > *2A(3) "the application referred to in sub section 2 shall be made to Labour Court or Tribunal before the expiry of 3 years from the date of discharge, dismissal, retrenchment or otherwise termination service as specified in sub section 1".*

In addition to the above said facts, the respondent in its written statement also given the parawise reply to the case as set up by the claimant in his statement of claim.

Sri Adarsh Jadghari has submitted that before deciding the matter in question on merit, the question "whether the claim petition filed by the claimant on 28.02.2011 as per the provisions of section 2A (2) of the Act, aggrieved by the order of termination/retrenchment dated 21.12.2001 is barred by the period of limitation as provided u/s 2A(3) of the Act or not?"

Sri Adarsh Jadghari in support of his argument submits, admittedly as per the case of the claimant his services were terminated on 21.12.2001, aggrieved by the same he filed present industrial dispute u/s 2A (2) of the Act; however, u/s 2A (3) of the Act the period of limitation is provided for three years, from the date of retrenchment/termination, so, the present claim petition is barred by the period of limitation as provided u/s 2A (3) of the Act, liable to be dismissed.

Sri D.K. Gupta, learned counsel for claimant, rebutting the said contention has placed reliance as pleaded in the statement of claim and submits that in view of the facts as stated hereinabove especially in paragraph 27 & 28, which are quoted herein below:

> *"27. That since the mandatory period i.e. 45 days as specified under Section 2- A (2) of the Industrial Disputes Act, 1947 (as amended by Industrial Disputes (Amendment) Act, 2010 (No. 24 of 2010) had been expired as such the concerned workman seek the permission from the Regional Labour Commissioner (Central), Lucknow to withdraw the case and to approach the Hon'ble Court on 27.01.2011, which was duly accepted by the Regional Labour Commissioner (Central), Lucknow.*
>
> *28. That in pursuance thereof, the workman concerned approaching the Hon'ble Tribunal for the adjudication of the industrial disputes as prevalent between the workman and the employers."*

The present claim petition filed u/s 2 (2) of the Act is maintainable and the arguments as raised by the learned counsel for respondent that same is barred by the period limitation is devoid of merit, be rejected.

I have heard the learned counsel for parties and gone through the record.

Before deciding the same it will be appropriate to go through aims and objects of Industrial Dispute Act, 1947 in brief which are that Industrial Disputes Bill was introduced by the Government of India in the

Legislative Assembly on the 28th October 1946. After the Select Committee's report on 3rd February 1947, with some amendments, it was passed in March 1947 and became the law from Ist April 1947 repealing the Trade Disputes Act 1929.

While retaining most of the provisions of the earlier law, this Act introduced two new institutions for the prevention and settlement of industrial disputes; works committees consisting of representatives of employers and workers; and machinery for industrial adjudication.

A reference to an industrial tribunal under this Act lies where both parties to any industrial dispute apply for such reference, and also where the appropriate Government considers it expedient so to do. An award of a tribunal has normally to be enforced by the Government and is binding on both parties to the dispute for such periods as may be specified, upto a maximum of one year. This Act seeks to give a new orientation to the entire conciliation machinery.

Another important new feature of the Act is the prohibition of strikes and lockouts during the pendency of conciliation and adjudication proceedings of settlements reached in the course of conciliation proceedings and of awards of industrial tribunals declared binding by the appropriate government.

Rules, orders or notifications requiring the larger industrial establishments to set up works committees were issued by the Government of India and most of the State Governments.

Objectives: General

The objectives of industrial relations and industrial disputes legislation, may be outlined as under:-

(i) Industrial Peace: For prosperity of industry, it is necessary that there be a continuous and growing production which is only possible if (a) there are no interruptions and stoppages in production i.e. absence of disputes, and (b) if the various agencies of production are satisfied and are in a harmonious bent to work. In other words, industrial peace is very necessary for the vitality of industry.

(ii) Economic Justice: All interruptions in production arising out of industrial dispute are really caused by the dissatisfaction of labour with their existing economic condition. The history of labour struggle is nothing but a continuous demand for fair return to labour expressed in varied forms e.g. (a) increase in wages, (b) resistance to decrease in wages, (c) grant of allowances and benefits etc.(***Hariprasad Vs. A.D.Divelkar, AIR 1957 SC 121***)

Social and economic justice which is the bedrock of our Constitution and economic organization also requires that any industrial relations or disputes legislation, to be effective remedial statute, must embrace not only law for regulation of labour relations with capital, process for channelizing collective bargaining methods for negotiation, mediation, conciliation and settlements of industrial conflict, but also a system for giving fair play and justice to labour and removal of economic injustice.

The preamble of the Act states that its main object is to make provision for investigation and settlement of industrial disputes. Viewed in the above background, the Industrial Disputes Act 1947 is a progressive piece of social legislation and is designed to settle the disputes on a new pattern known under the Act as adjudication machinery. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected. (***Banaras Ice Factory Ltd. Vs. Its Workmen, AIR 1957 SC 167***)

The purpose of the Act is to provide machinery for a just and equitable settlement by adjudication, (***G. Claridge and Company Ltd. Vs. Industrial Tribunal, Bombay, AIR 1951 Bombay 100***) and amelioration of the conditions of workmen in industry.

Individual and collective industrial disputes: Individual as well as collective disputes may ripen into industrial disputes. The true nature of an individual dispute is that it is a collective dispute. Though a dispute may at the inception be initiated by an individual, yet if it is taken up by the fellow-workers or a union, or a sufficient number of workers, it may assume the collective character and would become an industrial dispute. (**Standard Vacum Oil Co. Errakulam Vs. I.Tribunal, Errakulam 1952-II LLJ 612**). A dispute which continues to retain its individual character cannot be regarded as an industrial dispute. This being the basic law, it is within the competence of the legislature to widen or narrow the coverage of an industrial dispute. The Industrial Disputes Act has also been amended to cover some individual disputes. It is not necessary that a majority should take an industrial dispute. It is sufficient if a substantial group of workmen take it up. When thus taken, it becomes an industrial or collective dispute.

Individual dispute an industrial dispute: The important amongst the above are however the amendments of 1965. By the Act of 1965, a new Section 2A has been added in Act whereby specified categories of individual disputes are also deemed to be industrial disputes. The section reads as under:

"*2A. Dismissal, etc of an individual workman to be deemed to be industrial dispute-*

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

This amendment revives, impediment in the way of workman with the necessity that to make an industrial dispute it must be taken up or espoused by substantial section of the workmen or any union of those workmen and gives an individual workman a remedy for security of his service and indirectly freedom to join or not to join any union. Thus, individual disputes could be referred to Tribunal as per Section 2A after 1.12.1965. (**National Productivity Council, 1969-II LLJ 186**).

Thereafter, by Industrial Disputes (Amendment) Act 2010 (Act No. 24 of 2010), Section 2A(a), was renumbered as Sub-section (1) and by the same Act i.e. Act No.24 of 2010 Sub-section (2) and Sub-section (3) have been inserted after Section 2A (1) of Industrial Dispute Act 1947 which came into effect w.e.f. 15.09.2010, which reads as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute -

"(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-Section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-Section(2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section(1)."

Now the core question to be considered is that in view of the facts which are stated hereinabove, that admittedly the services of applicant was terminated on 21.12.2001, thereafter he has filed the present case before this Tribunal u/s 2A of the Act on 28.02.2011 on the grounds as taken by him in his claim petition, is maintainable or barred by the period of limitation as provided u/s 2A(3) of the Act.

Answer to the said question find place in the judgment passed by Hon'ble the Karnataka High Court in ***ITC Infotech India Ltd. vs. Venkataramana Uppada ILR 2016 Karnataka 3041***, relevant potion quoted as under:

"19. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1)." Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same

cannot be condoned by taking recourse to Section 5 of the Limitation Act, 1963 which has no application to the provisions of Industrial Disputes Act, 1947.

20. It is well settled principle that if an act is required to be performed within a specified time, the same would primarily be mandatory. It has been held in the case of NAZIRUDDIN VS SITARAM AGARWAL reported in AIR 2003 SCW 908 to the following effect:

> *"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."*

21. Thus, in the background of the dicta of the Apex Court in NAZIRUDDIN's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time' in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made."

And Hon'ble Rajasthan High court in the case of ***Pankaj Swami vs. Rajasthan State Road Transport Corporation & ors. MANU/RH/1788/2019*** after taking into consideration the provisions of sedation 2A(2) & 2A(3) of the Act held as under:

"The provisions are explicit, wherein the workman can approach the Labour Court for adjudication of the dispute in case of discharge, dismissal, retrenchment etc., however, sub-section (3) provides that the application should be made to the Labour Court before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified.

8. The submission made by learned Counsel for the petitioner that as the cause of action arose to the petitioner prior to introduction of the provision of limitation by sub-section (3) the same would have no application is concerned, the submission made is fallacious, inasmuch as, the provision under which the application has been filed by the petitioner i.e. section 2-A(2) of the Act, itself was introduced by the amendment Act of 2010 alongwith the limitation therein and therefore, the provision of limitation which was introduced in the year 2010 alongwith the main provision providing for the limitation would apply with all force and the submission that the same would have no application to the cause of action, which arose prior to 2007, has no basis.

The submissions as made, if accepted, would result in circumstances where if the cause of action has arisen post 2010, the same would be barred, whereas the causes, which arose prior to 2010 like in the year 2007 in the present case and the application is filed after 7 years, the same would never become barred by limitation, such a result is legally untenable.

9. The submission made by learned Counsel for the petitioner that as the petitioner had approached the Conciliation Officer and had raised the dispute before him, where there was no limitation and the petitioner approached the Labour Court only as per the directions of the Conciliation Officer the claim could not be rejected by barred by limitation also does not advance the cause of the petitioner, inasmuch as, the petitioner could have taken advantage of the said position, if the Conciliation Officer had sent a failure report to the appropriate Government who in turn had referred the dispute to the Labour Court. Merely because the Conciliation Officer suggested approaching the Labour Court, which suggestion was accepted by the petitioner, cannot be termed as a reference under section 10 of the Act to the Labour Court.

10. In view of the above discussion in so far as the rejection of the claim of the petitioner by the Labour Court being barred by limitation is concerned, the same cannot be faulted."

And in the case of ***Parthasarathy vs. Souther Pins and Products Pvt. Ltd. and Ors. MANU/TN/6691/2020*** Hon'ble the High Court of Madras has held as under:

"Inasmuch as the notice of termination of the Petitioner in the present case has been made on 06.10.2014 under Section 2-A(2) of the Act after the said amendment has come into force, the limitation of three years prescribed under Section 2-A(3) of the Act would necessarily apply. As such, there is no infirmity in the decision-making process of the Labour Court in refusing to entertain the application made by the Petitioner has time barred. This view is supported by the decisions of this Court in the following cases:-

(i) ITC Infotech India Ltd. v. Venkataramana Uppada (Order dated 03.03.2016 in W.P. No. 27510 of 2015 passed by the High Court of Karnataka)

(ii) Management of Ashok Leyland v. Presiding Officer, Labour Court (Order dated 13.04.2016 in W.P. Nos. 9640 and 9641 of 2016 passed by this Court)

(iii) Ravi Kumar v. Management, Tamil Nadu State Road Transport Corporation (Order dated 11.04.2017 in W.P. (MD) No. 4269 of 2017 passed by the Madurai Bench of this Court)

(iv) K. Settu v. Assistant Engineer, Tamil Nadu Electricity Board (Order dated 20.09.2019 in W.P. No. 8413 of 2019 passed by this Court)

5. A feeble attempt is made on behalf of the Petitioner to suggest that the period of conciliation must be excluded while computing the limitation. It is, no doubt, true that Section 2-A(2) of the Act contemplates such application to be made to the Labour Court after the expiry of 45 days from the date of application to the Conciliation Officer is made. However, it does not require that the conciliation proceedings should have been completed before making that application under Section 2-A(2) of the Act. The words in Section 2-A(3) of the Act are clear enough that the limitation has to be reckoned on the expiry of three years from the date of termination. The Petitioner in the instant case had made the application for conciliation on 12.04.2017 which had also concluded on 27.06.2017, but the Petitioner had not approached the Labour Court after 45 days either from 12.04.2017 or even from 27.06.2017. As such, the contentions made on behalf of the Petitioner cannot be countenanced."

(see also Kandasamy Spinning Mills Private Ltd. vs S. Palanisamy and Ors. MANU/RN/6831/2019

Thus, in view of above said fact, combined reading of section 2A (2) and 2A (3) of the Act, the legal position which emerge out is that if a workman is aggrieved by order of discharge, dismissal, retrenchment or otherwise termination, he may approach the Tribunal within a period three years from dated of passing of order.

Taking into consideration, above said facts and positon of law as well that "if law provides a particular thing that all other modes or methods of doing that thing must be deemed to have been prohibited", the said proposition of law is first held in the case of ***Tylor Vs. Tylor (1875) LR 1 ChD 426*** and adopted later by the ***Judicial Committee in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** and thereafter by the Hon'ble Supreme Court in a series of judgments including those in ***Rao Shiv Bahadur Singh & another Vs. State of Vindhya Pradesh AIR 1954 SC 322, State of Uttar Pradesh Vs. Singhara Singh AIR 1964 SC 358, Chandra Kishore Jha Vs. Mahavir Prasad 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755***.

In the case of ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297***, the Hon'ble Supreme Court held as under:-

"No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been

said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".

Hon'ble the Apex Court in the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111***, held as under:-

"24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute".

In the case of ***Harshad S. Mehta Vs. State of Maharashtra, (2001) 8 SCC 257***, it has been held as under:-

"There is no doubt that if the words are plain and simple and call for only one construction that construction is to be adopted whatever be its effect".

In the case of ***Union of India Vs. Hansoli Devo (2002) 7 SCC 273***, Hon'ble the Supreme Court observed as under:-

"9.It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."

In the case of ***Patango Kadam Vs. Prithviraj Sayajiro Yadav Deshmukh (2001) 3 SCC 594***, took the view:-

"12. Thus when there is an ambiguity in terms of a provision, one must look at well-settled principles of construction but it is not open to first to create an ambiguity which does not exist and then try to resolve the same by taking recourse to some general principle."

Also, Hon'ble the Supreme Court in the case of ***Popat Bahiru Govardhane & others vs. Special Land Acquisition Officer & another (2013) 10 SCC 765*** has held as under:

"16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."

(See Martin Burn Ltd. v. Corpn. of Calcutta10, AIR p. 535, para 14 and Rohitash Kumar v. Om Prakash Sharma11.)

Reverting to the facts of the present case, as per admitted position, the services of the workman was terminated on 21.12.2001, challenged by him by filing the present industrial dispute on 28.02.2011.

So, keeping in view the above said facts as well as that the workman cannot derive any benefit from the facts on which he has approached the Tribunal after expiry of period three years from the date of his termination, because his services were terminated on 21.12.2001 and filed the present case on 28.02.2011 u/s 2A (2) of the Act, as such, the claim petition is barred by the period of limitation provided u/s 2A (3) of the Act, liable to be rejected.

Accordingly, the same is rejected on the ground that same is barred by period of limitation as per section 2A (3) of the Industrial Disputes Act, 1947, with liberty to the claimant to pursue its case before appropriate forum as per law.

Award as above.

Justice ANIL KUMAR, Presiding Officer

नई दिल्ली, 30 मई, 2023

का.आ. 911.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वृषभ अधिकारी संस्थान, द्वारा - मानद सचिव, द मॉल, दिल्ली छावनी, नई दिल्ली, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री विजय कुमार, कुमार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ संख्या 30/2019) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 26.05.2023 को प्राप्त हुआ था।

[सं. एल-14012/09/2018 -आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 30th May, 2023

S.O. 911.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 30/2019) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to Tarus Officer Institute, Through- Honarary Secretary, The mall, Delhi Cantonment, New Delhi and Shri Vijay Kumar,Worker,which was received along with soft copy of the award by the Central Government on 26.05.2023.

[No. L-14012/09/2018 -IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. PRANITA MOHANTY, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 30/2019

Date of Passing Award- 1st May, 2023

Between:

Sh. Vijay Kumar,
S/o Late Shri Roop Ram,
R/o House No. 167-A, Village-
Jhareda, Delhi Canntt., Delhhi-110012 ….. Workman

Versus

Tarus Officer Institute,
Through- Honarary Secretary, The mall,
Delhi Cantonment,
New Delhi 110012. …Management

Appearances:-

Shri Mohan Nair, Ld .A/R for the claimant.
Shri Santosh Kumar Pandey, Ld. A/R for the management.

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Tarus Officer Institute, Through- Honarary Secretary, The mall, Delhi Cantonment, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-14012/09/2018 (IR(DU)) dated 29.01.2019 to this tribunal for adjudication to the following effect.

" Whether the action of management of Taurus Officers Institute in refusing Sh. Vijay Kumar S/o Sh. Roop Ram who was working on the post of waiter w.e.f. 1989 on ad-hoc basis and made permanent w.e.f. 1990 to resume his duties after being cured from illness

w.e.f. 04/03/2011 even though letter of intimation dated 01/10/2010 was given to the management is legal and justified? If yes, what relief is he entitled to and what direction are necessary in this respect?"

As stated in the petition of claim the claimant was appointed as a waiter in the canteen of the management on ad-hoc basis in the year 1989. He was made permanent in the year 1990. When he was performing his duties to the satisfaction of the employer, fell ill on 09.08.2010. being diagnosed with Tuberculosis, he was hospitalized and informed the said fact to the management over phone. Again the fact of his absence from duty on account of illness was duly intimated by him through a written intimation sent through a messenger. Receipt of the same was duly acknowledged by the management. After recovery from illness, the claimant on 05.03 2011 reported for duty with the original medical certificate and fitness certificate issued on 04.03.2011. but he was not taken on duty and advised to come after one week as his service file need to be verified. Thereafter the claimant visited the office of the management on several occasions and received information that his service file is yet to be received. He was not allowed to join duty though he had fully recovered from illness. He was advised to meet the Honorary Secy of the establishment, who was a commanding officer. Having no other source, the claimant met the Honerary Secy, Col Prem Kumar and requested him to join duty. But he was not allowed. On the contrary, he was informed that the management is considering to initiate a court of inquiry against him and he will be intimated about the same. But intimation about inquiry was received. He was visiting the office of the management regularly till the year 2016 and tried to represent the secy about his miserable condition and request to allow him to join duty. But all his efforts went in vain. Hence on 07.01.2017, he made another representation to the management to allow him join his duty. But no reply was received. When the matter stood thus, he came to know about the Award passed by the CGIT Delhi in the ID No 331/2011 in which he was one of the claimants. In the said Award the Tribunal had directed for payment of appropriate wage and other benefits to the claimants. Thus the claimant made a representation to the management on 19.04.2017 requesting to allow him to join duty and release the benefits as directed by the CGIT. Again the management did not respond and the claimant being wrongly advised, filed a case before the Hon,ble CAT, New Delhi seeking redress. But the Hon'ble CAT by order dt 30th May 2017, passed in OA No 1866/2017, gave liberty to the claimant to withdraw the application for want of jurisdiction and file the same before the appropriate authorities. The claimant thereafter raised the dispute before the Labour Commissioner, New Delhi. The attempts for conciliation failed and the appropriate Govt referred the matter to this Tribunal for adjudication in terms of the reference. In the claim petition filed, the claimant has made a prayer for a direction to the management to reinstate him in service granting continuity and release all other consequential benefits. Along with the claim petition, the claimant has filed copy of the medical certificate, fitness certificate, representations made to the management and the orders passed by the CGIT and CAT, New Delhi.

Being noticed by this Tribunal, the management appeared and filed written statement denying the claim advanced by the claimant. But it has been admitted that the claimant was appointed as a waiter in the canteen of the Management in the year 1989 but he was not made permanent in the year 1990 as claimed by him. The management does not have any official record to justify the claim of the claimant. More over the claim is not maintainable as no demand notice was served on the management before filing the claim. No representation by the claimant was ever received by the management. It has been stated that a person when appointed on contractual basis is at liberty of leaving the employment at his wish.But in the written statement filed, no specific denial to the claim has been stated nor the management has filed any document to establish that the employment of the claimant in the year 1989 was on contractual basis. However the management has denied to have received any representation from the claimant. Besides this the management has challenged the maintainability of the proceeding on the ground of limitation as the claim has been filed after a long delay.

The claimant filed written replication to the written statement of the management stating that the he had sent two written representations dt 07.01.2017 and 19.04.2017, which was after the award passed by the Hon'ble CGIT. Copies of the representations have been placed on record.

On these rival pleadings the following issues have been framed for adjudication.

ISSUES

1-whether the proceeding is maintainable?

2-whether the Management had illegally prevented the workman from joining his duty from 01.10,2010.

3-what is the effect of that refusal and to what relief the claimant is entitled to.

4- whether the claim is not maintainable being barred by limitation.

The claimant examined himself as WW1 and produced the documents like his prescription, medical certificate with the certificate of fitness, copies of the representations dt 01.10.2010, 07.01.2017 and 19.04 2017. He has also filed the copy of the award passed by CGIT Delhi in ID No 331/2011 and the order passed by CAT New Delhi in OA No2954/2003.

Similarly the management examined one of it's officers who is currently working as the Asst Honorary Secy of Taurus Officers Institute. The witness has not produced any document referred to in WS .but a No of warning letters issued to the claimant between Sept 2008 to May 2010 has been filed along with a rough calculation sheet showing the No of working days between January 2009 to Feb 2010, the presence and absence of the workman for duty during that period. The documents have been produced by the witness for the Management as MW 1/1(colly) At the out set of the argument the learned AR for the Management submitted that the claimant was engaged for work in the canteen of the management on contractual basis in the year 1989. He had worked up to Feb 2010. Being a contractual employee he himself stopped reporting for work and his service was neither terminated nor the management ever refused to take him on duty. More over, during his employment, he was very irregular in reporting for duty and on several occasions he was warned to mend his behavior, which is evident from the document marked as MW1/1 colly. He also argued that the present proceeding , after such a long delay is barred by Limitation.

The counter argument advanced by the claimant is that he was very regular for his duty and it is the first instance when he absented himself from duty for a long period on account of his illness. He also argued that the statute does not prescribe any period of limitation for reference of a dispute to the Tribunal in terms of the provision of sec 10(1) (d) of the ID Act unlike the time frame prescribed u/s 2A of the said Act.

FINDINGS

Issue no1&4

The maintainability of the proceeding has been challenged by the management on the ground of limitation. It has been stated that the alleged termination of service happened in the year 2010 and the dispute was raised by the claimant in the year 2017 and reference by the Govt was made in the year 2019. The learned AR for the management by pointing to the statement of the claimant recorder during cross examination pointed out that the claimant has admitted not to have raised any dispute during the intervening period between 2010 to 2017. Hence the deliberate delay in raising the dispute dis entitles the claimant of the benefits prayed.

But the pleading and evidence of the claimant clearly shows that he, for the refusal of the management to take him for duty made several oral and written representations to the management. He even once met the Honorary Secy of the establishment.

The Claimant has also filed the copies of the representations made by him on 07.01.2017 and 19.04.2017 and the copy of the order passed in OA No 2954/2003, which shows that the claimant, after making representation to the person in authority was waiting for the outcome. Not only that he was also waiting for a favourable outcome in the case of the general demand raised by him and co workmen before the Hon'ble CAT. In his oral statement he has also stated that being wrongly advised he approached the Hon'ble CAT by filing OA 100/1866/2017. The said proceeding was disposed of by order dt30th May 2017 as Annexure E issued to him by the Hon'ble CAT to approach the appropriate forum. This fact has not been disputed by the Management. Thus from the totality of the oral and documentary evidence it is amply clear that the claimant a person not so educated was waiting for a favorable decision by the management on his representation and later being mis advised filed a case before CAT and having withdrawn the same approached the conciliation officer leading to the present reference. Hence there was no deliberate delay on the part of the workman. More over the statute has not prescribed any time frame for reference u/s 10 of the Act unlike the period prescribed u/s 2A of the Act. Hence it is held that the proceeding is not barred by limitation. These two issues are accordingly answered in favour of the claimant.

Issue No 2&3

Before analyzing the evidence it is necessary to look into the facts admitted by both the parties. It is not disputed that the workman was appointed as a waiter in the canteen of the management in the year 1989 on contractual basis and he continued to work till October 2010. Where as the claimant has stated that his service was made permanent in the year 1990, the management has denied the same in the WS. The claimant has not placed any document to prove that his service was made permanent in the year 1990. It is also admitted by the parties that his last drawn salary was 11,000/- per month. To support the fact the claimant has filed the copy of the Bank pass book.

Now it is to be examined if the action of the management in not allowing the claimant to resume duty is legal and justified.

In his oral statement the claimant has stated that he fell ill on 09.082010 and was diagnosed with Tuberculosis and hospitalized. He gave intimation about the same over phone and again by writing sent through his messenger. The written intimation was received by the management. Personal copy of the intimation containing an endorsement of receipt has been filed by the claimant as WW1/1.management has simply denied this endorsement. But no evidence has been adduced to disprove the same. The claimant has filed documents on record to show that he was under treatment for Tuberculosis from 08.09. 2010 to 04.03.2011.anddeclared fit to resume duty on 04.03.2011. The claimant has stated that he approached the management with the medical certificate requesting to allow him to join. But management made him to run to the office for a long period and ultimately refused his joining .hence he filed a case before the Hon'ble CAT. The management while examining the witness as MW1 has denied the said stand of the claimant. Very surprisingly, while examining MW1 , for the first time the management came up with a stand that the claimant was very irregular in his duty and for the same several warnings were issued to him. The documents supporting the statement were not filed with the WS nor the same was pleaded. Hence the veracity of those self serving documents can not be accepted to conclude that the claimant was an irregular person and had voluntarily absented himself from duty. This stand of the Management could have been accepted, had there been any document placed on record to show that on any occasion the claimant who was appointed on ad-hoc/ contractual basis was called to join duty forth with or any show cause notice was served on him. Merely because the workman during cross examination admitted about receipt of one show cause notice, it can not be accepted to justify the action of the management in not allowing him to join duty. It is worth mentioning that the management has chosen an officer to be the witness, who as per his own statement has joined the establishment in the year 2021, whereas the dispute relates to the year 2010. The witness has admitted that he has no knowledge if he claimant was working continuously from 1989 to 2010. He has admitted that no disciplinary action was taken against the claimant though he has stated that the witness voluntarily stopped reporting for work. The witness has admitted that no notice of termination or notice pay and termination compensation was paid to him. At least the management could have produced documents to show the nature and tenure of the appointment of the claimant. In absence of any documentary evidence, it is held that the claimant was working as a regular employee of the management as waiter and his service was illegally terminated in violation of the provisions of sec 25 F of the ID Act when for a situation beyond his control and on account of illness he remained absent from duty and was not allowed to rejoin duty after recovery amounting to dismissal from service.

The claimant has all along pleaded and stated about his unemployment status. The law is well settled that the workman once discharges his primary burden of proving unemployment, the onus shifts on to the management to prove that the claimant has not been gainfully employed during the intervening period of loss of employment and legal proceedings. In this case the management has remained satisfied by pleading that an young person would not and can not remain unemployed for such a long period.

Thus from the totality of the evidence it is concluded that the service of the claimant was illegally terminated by the management. Now it is to be decided, to what relief the claimant is entitled to. It is not disputed that the claimant had worked for the management for 21 long years , when his service was terminated by the management by not allowing him to join the duty. In the affidavit filed in this proceeding in the year 2019, he has described his age as 50 years and at present he must be 53 years old and has not attained the age of superannuation. The learned AR for the management during course of argument submitted that no identified post of waiter is available to accommodate the claimant if any order of re instatement is passed. On the other hand the learned AR for the claimant argued in favour of re instatement.

In several pronouncements the Hon'ble SC have clearly held that when the termination of service is illegal for non compliance of the provisions of sec 25F of the ID Act, the most appropriate relief would be reinstatement. But the position changes if the said order is passed after a long delay and gap. In such situations the proper recourse is to compensate the workman with the loss suffered.

In this case the termination was effected in the year 2010 and this award is being passed after 13 years and the claimant is now 53 years old .considering the same it appears proper to allow compensation to the workman in lieu of re instatement. The Hon'ble SC in the case of **Novatris India Ltd vs State of West Bengal and Others (2009) 3 SCC,** have held that merely because the termination is held illegal, it would not justify automatic payment of back wages. For granting the back wages the court has to consider the employment status, length of service of the workman etc. In this case, the workman had worked in the establishment for more than 20 years. No dispute has been raised with regard to his last drawn salary @11000/- per month. There is no evidence on record to believe that the workman has been gainfully employed. Considering all these aspects including the current age of the claimant, it is held proper to grant compensation to the claimant instead of a direction for reinstatement with back wages. The issues are accordingly answered. Hence ordered.

ORDER

The claim be and the same is answered in favour of the workman/claimant. It is held that the service of the workman was illegally terminated by the Management in gross violation of the provisions of sec 25F of the ID Act. The workman since is aged about 53 years and there is a gap of about 11 years between the termination and thi award, the management shall pay him a lumpsum amount of eight lakh in lieu of reinstatement with back wages. This amount shall be paid to the claimant within two months from the date of publication of the award without interest, failing which the amount shall carry interest @ 4% per annum from the date of accrual and till the payment is made.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 30 मई, 2023

का.आ. 912.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आयुक्त, पूर्वी दिल्ली नगर निगम, पटपड़गंज औद्योगिक क्षेत्र, शाहदरा, दिल्ली, के प्रबंधतंत्र के संबद्ध नियोजकों और श्रीमती नरेश व 02 अन्य, द्वारा -एमसीडी जनरल मजदूर यूनियन , शाहजहाँ रोड, नई दिल्ली, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली के पंचाट (संदर्भ संख्या 21/2019) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 26.05.2023 को प्राप्त हुआ था।

[सं. एल-420112/203/2018 -आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 30th May, 2023

S.O. 912.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 21/2019) of the Central Government Industrial Tribunal cum Labour Court - II New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The commissioner, East Delhi Muncipal Corporation, Patparganj Industrial Area, Shahdra, Delhi and Smt. Naresh & 02 Ors.,Through- MCD General Mazdoor Union, Shahjahan Road, New Delhi,, which was received along with soft copy of the award by the Central Government on 26.05.2023.

[No. L- 420112/203/2018 -IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present: Smt. PRANITA MOHANTY, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 21/2019

Date of Passing Award- 1st May, 2023

Between:

Smt. Naresh & 02 Ors.
As represented by MCD General Mazdoor Union,
C/o Room No. 95, Jam Nagar House,
Shahjahan Road, New Delhi-110011 …Workman

Versus

The commissioner

East Delhi Muncipal Corporation,
Udyog Sadan, Plot No. 419,
Patparganj Industrial Area,
Shahdra, Delhi-110032 …Management

Appearances :-

Shri B.K. Prasad, Ld .A/R for the claimant.
Shri Arvind Kumar, Ld. A/R for the management.

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Tarus Officer Institute, Through- Honarary Secretary, The mall, Delhi Cantonment, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-420112/203/2018 (IR(DU)) dated 10.01.2019 to this tribunal for adjudication to the following effect.

"Whether the Smt. Naresh W/o Late Hira Lal, Smt. Rajesh Devi W/o Late Virendra Singh & Smt. Omwati w/o Late Sukhbir Singh are entitled for regular post of Mali w.e.f. 16.09.2009 with all consequential benefits including regular pay scale to each of the workmen instead of muster roll Mali? If yes, what directions are necessary in this respect?"

It has been stated in the claim petition that the claimants of this proceeding are working under EDMC which came in to existence after trifurcation of MCD to EDMC,SDMC&NDMC. (now unified and merged by notification dt19th May 202). They have been appointed as daily rated/ muster roll Malis on compassionate ground w. e. f. 16.09.2009, for the death of their husbands during service, who were the regular employees of the management. The appointment of the claimants on daily wage basis is illegal and they are entitled to be appointed on compassionate ground as regular employees and entitled to all the benefits available to the regular employees. Giving details of the employee status of their deceased husbands including the date of their death and post held at that time, the claimants have prayed for a direction to the management to appoint them as regular Malis w. e. f. 1616.09.2009 with all consequential benefits and regular pay scale applicable to the said posts.

It has been stated that the dispute was espoused by the union and raised before the conciliation officer. Though steps were taken for conciliation, the same failed and the appropriate Govt referred the dispute to this Tribunal for adjudication. Hence this proceeding.

The management appeared and raised various objection including maintainability of the proceeding. It has been admitted that the husbands of the claimants through whom they are claiming compassionate appointment were the regular employees of the Management. It is true that on the death of a regular employee while in harness, one of the family member is entitled to compassionate appointment in a regular group C post subject to fulfillment of the prescribed criterion and availability of vacancy in the limited percentage as prescribed in the notification issued by DOP&T. the dependents of a regular employee who died in harness can apply for compassionate appointment which is limited to 5% of the annual direct Recruitment vacancies as decided by DOP&T. Thus, the compassionate appointment in all death cases can not be claimed as amatter of right and the same is regulated by the procedure and notification issued by the Govt. so far as the case of the claimants are concerned they have not been appointed on daily wage or on temporary Muster Roll as pleaded by them. The facts stated are misleading. In fact the claimants have been appointed on contract basis which is clearly evident from the documents filed. It is true that the dependants of a deceased employee has a right to apply for compassionate appointment against regular post as per the policy of the Govt. but the policy does not guarantee regular appointment to all such applicants which is limited to 5% of the regular vacancies created in a calendar year. Since good no of applications are received in a year for such compassionate appointment, the Management to obviate the difficulty and in order to help the family members of the deceased employee brought out a policy of it's own to give appointment to one of the family member of the deceased employee on contractual basis which is to be renewed year after year, subject to the satisfactory performance. This scheme is independent of the compassionate appointment scheme of the Govt which is limited to 5% of the annual regular vacancies in group C cadre. The persons so appointed have no right to claim the status of regular employees. The management has also denied the claim for retrospective appointment on regular posts. Since the claimants have been granted contractual employment for want of vacancy under 5% quota, their claim is unjustified and liable to be dismissed.

On these rival pleadings the following issues were framed for adjudication.

ISSUES

1-whether the proceeding is maintainable.

2-whether the claimants appointed on compassionate ground as daily rated Muster Roll employeesare entitled to regular post of Mali w. e. f. 16.09.2009.

3-to what other relief the claimants are entitled to.

The claimants of the proceeding did not testify as witnesses. In stead the president of the MCD General Mazdoor Union who is the AR of the claimants too testified as WW1. He relied and filed few documents marked in a series of Ext WW1/1 to WW1/4. Similarly the Administrative Officer of the management has been examined as MW1. He also produced the circulars issued by the management from time to time relating to implementation of compassionate appointment scheme as a welfare measure. The documents have been marked as MW 1/1 TO MW1/3.

At the outset of the argument the learned AR for the management challenged the maintainability for want of espousal. He also argued that the entire claim is based upon misconceived facts and the claimants are asking for a relief as a matter of right. The management being a corporation is bound by Govt orders and circulars and can not travel beyond the same. No injustice was meted to the claimants at any point of time .rather their interest was taken care of by giving them contractual appointments to save the family of the deceased employee from misery. The welfare scheme lunched by the management has well taken care of them and they have unjustifiably claimed appointment as regular employees.

On the other hand the learned AR for the claimants argued that as per the order and notification of DOP&T, a family member of a regular employee, who dies while in service, is entitled to compassionate appointment as regular employee. In this case since the claimants have been given appointment on compassionate ground, can not be so appointed as daily rated muster roll employees. They should have been appointed as regular employees. The circular or any order issued by the management being opposed to the scheme framed by DOPT can not be given effect to. The Industrial adjudicator is empowered to interpret the said circular and grant appropriate relief to the claimants. He there by argued to reject the circular of the management and issue direction in terms of the compassionate appointment notification issued by the DOP&T.

In view of the argument advanced, the short question which is required to be answered is if the claimants are entitled to be treated as regular employees with retrospective effect i.e from the date of their initial appointment. The admitted facts as per the pleadings of both the parties are that the husbands of the claimants through whom they are claiming compassionate appointment were the permanent and regular employees of the management and at the time of their death, they were working as permanent Malis. It is also admitted by both the parties that theclaimants have been appointed on compassionate ground since 16.09.2009. only dispute is that the claimants are describing the appointment on daily wage basis and the management while denying the same has stated that the appointment is on contractual basis.

FINDINGS

Issue No 1

The maintainability has been challenged by the management on the ground that the dispute is not an Industrial Dispute for want of espousal and the union representing the claimants is not the recognized Union of EDMC. But the witness for the claimants who is none but the president of MCD General Mazdoor Union, while giving evidence , proved the letter of espousal as ext WW1/4 and added that the union in it's meeting espoused the cause of the claimants and authorized him to represent the claimants. During course of argument the learned AR for the claimants also pointed out that before bi furcation of MCD, this union was the recognized union and continued to represent the workers even after tri furcation. Now that the MCD has again been unified, this union is the recognized union. This argument is accepted in absence of any other evidence adduced by the Management. The issue is answered in favour of the claimant.

Issue No 2&3

The grievance of the claimants is that, though they have been appointed in the management on compassionate ground after the death of their husbands, who were regular employees of the management, the later treated them unfairly by giving appointment as daily rated mustor roll employees in stead of regular employees. This is an unfair labour practice and stands contrary to the office memorandum dt 09/10/1998 and the Scheme for Compassionate Appointment under Central Government issued by the Ministry of Personnel, Public Grievance and Pension (DOP&T). Under this scheme, all the appointments are to be made against

regular vacancies and persons so appointed are to be taken as regular employees of the establishment. Besides adducing oral evidence the claimants have filed the copy of the above mentioned scheme of DOP&T as ext WW1/2 and the office order relating to the appointment of the claimants as ext WW1/1.

The rival stand of the management in this regard is that the claimants were neither appointed under the scheme of compassionate appointment issued by DOP&T, nor their appointments are as daily rated Mustor Roll employees. While filing two circulars relating to the welfare scheme of the management to give support to the family of the deceased employees as ext MW 1/3, the management has adduced evidence through MW1 to say that the compassionate appointments are made as per the scheme of DOP&T. but the appointments are limited to 5% of the regular vacancies created for a calendar year. Hence all the applications received in a year can not be accommodated against the said 5%. Hence , as a welfare measure, the MCD has issued circular to give appointment to one of the family member of the deceased employee as daily wage workers and to consider their cases under the compassionate appointment scheme in phased manner subject to fulfillment of eligibility. This circular issued on 11.10.2007 was later on modified by the circular dt 16.12.2008. under this new circular the appointment of the family member of the deceased employee is being made on contractual basis subject to renewal every year based upon the performance.

The witness for the claimants during cross examination was confronted with these circulars. But the witness stated that the circulars stand contrary to the circular of DOP&T. when asked if the circular has been objected to by the Unions, he replied affirmatively, but no documents to that effect has been placed on record. There is also no evidence before this Tribunal to believe that the circular issued by the Management and marked as ext MW 1/3 has been challenged by the unions in any proper court of Law.

Admittedly the claimants are working as Malis in the establishment of the management. Their deceased husbands were the regular Malis and had died while in service. The office order of appointment filed by the claimants as WW1/1dt 16.09.2009, the date from which they are claiming regularization clearly shows that they have been appointed on contractual basis on compassionate ground and not as daily rated Mustor Roll employees as claimed by them. The oral evidence adduced by MW 1 shows that the claimants were appointed under the welfare measure taken by the management on compassionate ground with the sole intention of rendering support to the family of the deceased employee. The said appointment stands independent of the compassionate appointment scheme of DOPT. The management witness has also stated that the mechanism has been developed with a view to give respite and provide livelihood to the families of deceased employees as all the applicants can not be accommodated against the 5% vacancy as directed by DOPT.

On a careful reading of the circulars dt 11/10/2007& 16/12 2008, it clearly appears that the appointment under the said circulars are independent of the scheme of DOPT. The evidence adduced by Management further reveals that from among the persons appointed on contractual basis the eligible persons are being appointed against the 5% regular vacancies in a phased manner subject to their eligibility. The other document filed by the management as MW 1/1 shows the procedure adopted in this regard. It also reveals that the candidature of the claimant Om wati was considered thrice and rejected being found unsuitable. The documents filed by the management further show that the appointments under the welfare mensure scheme were previously made on daily wage basis and now on contractual basis.

The claimants as per their own document have been appointed don contractual basis and not as daily rated Mustor Roll Employees.

The learned AR for the claimants forcefully argued that once the appointment is on compassionate ground the same should be against regular vacancies as directed by DOPT. While agreeing to the said guideline of DOPT, it is worth mentioning that these claimants were never appointed under the compassionate appointment scheme of DOPT , but as per the circular issued by the MCD management as a good gesture to provide support to the family of the deceased employee until their turn comes for regular appointment under the 5% quota of regular vacancy as directed by DOPT. It would be proper to mention that all the applications received in a year can not be considered by the management for compassionate appointment for the 5% restriction imposed by DOPT and the applicants like the claimants can not claim the same as a matter of right.

In this case the evidence adduced by both the parties clearly proves that the claimants have been appointed on contractual basis by the management subject to renewal on year to year basis and their candidature is open for consideration under the scheme of DOPT. They can not misread their appointment as the appointment on compassionate ground under the scheme of DOPT and demand regularization.

The learned AR for the claimants , during argument drew the attention of the Tribunal to the judgment of the Hon'ble High Court of Delhi passed in the case of Municipal Corporation of Delhi vs Shri Rajesh (WPC No 12996/2009) and submitted that the Hon'ble court in that judgment have upheld the award passed by the Labour court directing the management to grant regular pay scale and all other consequential

benefits to claimant appointed on compassionate ground. But the facts of the said case is distinguishable from the facts of the case in hand. In that case the compassionate appointment was made in the year 1983, when the welfare measure circular of the MCD issued in 2007&2008 were not in existence and thus the appointment was treated to be one under the scheme of DOPT. But here the claimants having been appointed under welfare circular of 2008 issued by MCD, their appointment can not be held under the scheme of DOPT and thus no direction can be given to the management to treat them as regular employees and extend all the consequential benefits. This issue is answered against the claimants. Hence ordered.

ORDER

The reference be and the same is answered against the claimants. It is held that they are not entitled to the relief claimed in the claim petition.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 30 मई, 2023

का.आ. 913.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मुख्य महाप्रबंधक, ब्रिटिश इंडिया कॉर्पोरेशन लिमिटेड, कानपुर वूलेन मिल्स शाखा, सिविल लाइंस, कानपुर (यूपी); मुख्य महाप्रबंधक, भारत संचार निगम लिमिटेड, ललितपुर रोड, झांसी, के प्रबंधतंत्र के संबद्ध नियोजकों और श्री पति राम, कामगार, के बीच अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 133/2014) को जैसा कि अनुलग्नक में दिखाया गया है, को प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 24.05.2023 को प्राप्त हुआ था।

[सं. एल-40011/14/2014-आईआर(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 30th May, 2023

S.O. 913.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 133/2014) of the Central Government Industrial Tribunal cum Labour Court – Kanpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief General Manager, British India Corporation Ltd., Cawnpore Woolen Mills Branch, Civil Lines, Kanpur(U.P.) ; The Chief General Manager, Bharat Sanchar Nigam Limited , Lalitpur Road,Jhansi, and Shri Pati Ram,Worker, which was received along with soft copy of the award by the Central Government on 24.05.2023.

[No. L-40011/14/2014 -IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT KANPUR

Present: SOMA SHEKHAR JENA**,** HJS(Retd.)

I.D.No. 133/2014

Ref.No.L-40011/14/2014-IR(DU) dated: 30.09.2014

BETWEEN

Shri Pati Ram S/O Shri Virkhe,
Vill & PO-Uchiya,

Datiya(M.P.)-

AND

1. The Chief General Manager, British India Corporation Ltd., Cawnpore Woolen Mills Branch, Civil Lines,Kanpur(U.P.)-208001.
2. The Chief General Manager, Bharat Sanchar Nigam Limited , Lalitpur Road,Jhansi-284001.

AWARD

This industrial dispute referred to this Tribunal for adjudication in Notification No.L-40011/14/2014-IR (DU) dated: 30.09.2014 is stated in the schedule below:-

"Whether the actions of the management of Bharat Sanchar Nigam Limited, Jhansi in terminating the services of Shri Pati Ram S/O Shri Virkhe w.e.f. 01.01.1995 is just and fair & legal? IF not, to what relief the workman concerned is entitled to?"

After the notification was received in this Tribunal on behalf of the Claimant workman statement of claim was submitted before this Tribunal. In the statement of claim it was averred by the claimant workman that on 01.01.1995 the job of the Claimant workman was terminated without compliance of the provisions mentioned in Section 25(F) of Industrial Dispute Act,1947(I.D. Act). The claimant workman has prayed for declaration that termination of his job by O.P. management was illegal. Written statement has been filed by the O.P. (B.S.N.L.) Jhansi denying violation of any provision of the I.D. Act 1947. O.P. has refuted employer servant relationship between the O.P. and the claimant workman Claimant workman has submitted rejoinder refuting the stand of O.P.This proceeding was fixed on the date 10.09.21, 10.11.21, 06.01.22, 24.03.22, 22.04.22, 10.05.22, 17.08.22 and on 20.10.22 but none appeared on behalf of the claimant workman side.

The averments stated in the statement of claim and in rejoinder cannot be readas substantive evidence. From the above stated scenario it is presumable that the claimant workman is not interested in pursuing his case before this Tribunal. In such scenario, nil award is passed.

Parties are left to bear their respective costs.

SOMA SHEKHAR JENA, Presiding Officer

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